When Can the Tenant Sue for "Doubling-Penalty" Damages per Minn. Stat. § 504B.178, subd. 4(3) or (4)? The Statute is Unclear and Legislative History Does Not Resolve the Ambiguities.

TABLE OF CONTENTS

I. THE DOUBLING-PENALTY PROVISION IN THE SECURITY-DEPOSIT STATUTE

Minn. Stat. § 504B.178, subdivision 4 currently reads as follows:

> Subd. 4. **Damages.** Any landlord who fails to:
>
> > (1) provide a written statement within three weeks of termination of the tenancy;
> >
> > (2) provide a written statement within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant;
> >
> > (3) transfer or return a deposit as required by subdivision 5; or
> >
> > (4) provide the tenant with notice for an initial inspection and move-out inspection as required by section 504B.182, and complete an initial inspection and move-out inspection when requested by the tenant,
>
> after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, *is liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon*. [italics added]

The penalty (language in *italics* above) in slang is often called the "doubling penalty". It gives the tenant a claim for her deposit + interest on top of other claims she might have.

II. THE DOUBLING-PENALTY PROVISION APPLIES TO THREE TYPES OF BREACHES.

This subdivision is not a model of clarity, but it surely is meant to impose the doubling penalty for any of these three types of violations by the landlord:

> [Type A Violation] Failure to return or account for the deposit by the applicable three-week or five-day deadline. See paragraphs 1-2 of subdivision 4. This deadline is the one discussed at length in my blog essay, Mungall v. Garry: The Court of Appeals Misconstrues the 21-Day Clock in Minn. Stat. § 504B.178 . This deadline comes into play after the tenancy ends.
>
> [Type B Violation] Failure per subdivision 5 of section 504B.178. See paragraph 3 of the subdivision 4. Subdivision 5 reads:

Subd. 5. **Return of deposit following termination of the landlord's interest in the premises.** Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within 60 days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenant, whichever occurs first, do one of the following acts, either of which shall relieve the landlord or agent of further liability with respect to such deposit:

(1) transfer the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of the transfer and of the transferee's name and address; or

(2) return the deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

(bold emphasis in original).

[Type C Violation] Failure to follow the rules in Minn. Stat. § 504B.182 regarding initial and final "inspections" ("joint walkthroughs" in common parlance). See paragraph 4 of subdivision 4. Section 504B.182 reads:

504B.182 INITIAL AND FINAL INSPECTION REQUIRED.

Subdivision 1. **Initial inspection.** (a) At the commencement of a residential tenancy, or within 14 days of a residential tenant occupying a unit, the landlord must notify the tenant of their option to request an initial inspection of the residential unit for the purposes of identifying existing deficiencies in the rental unit to avoid deductions for the security deposit of the tenant at a future date. If the tenant requests an inspection, the landlord and tenant shall schedule the inspection at a mutually acceptable date and time.

(b) In lieu of an initial inspection or move-out inspection under subdivision 2, when a tenant agrees, a landlord may provide written acknowledgment to the tenant of photos or videos of a rental unit and agree to the condition of the rental unit at the start or end of the tenancy.

Subd. 2. **Move-out inspection.** Within a reasonable time after notification of either a landlord or residential tenant's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify

> the tenant in writing of the tenant's option to request a move-out inspection and of the tenant's right to be present at the inspection. At a reasonable time, but no earlier than five days before the termination or the end of the lease date, or day the tenant plans to vacate the unit, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make a move-out inspection of the premises. The purpose of the move-out inspection shall be to allow the tenant an opportunity to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security deposit. If a tenant chooses not to request a move-out inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time.
>
> Subd. 3. **Other requirements under law.** Nothing in this section changes the requirements or obligations under any other section of law, including but not limited to sections 504B.178, 504B.185, 504B.195, 504B.271, 504B.375, 504B.381.
>
> Subd. 4. **Waiver.** Except as allowed under subdivisions 1 and 2, when a tenant chooses not to request an initial or move-out inspection, or alternate inspection under subdivision 1, paragraph (b), any provision, whether oral or written, of any lease or other agreement, whereby any provision of this section is waived by a tenant, is contrary to public policy and void.

(bold emphasis in original).

III. WHEN DOES THE RIGHT TO SUE FOR THE DOUBLING-PENALTY FOR EACH TYPE OF BREACH VEST?

Subdivision 4 does not directly say when the tenant's claim for the doubling penalty vests, i.e. when is the earliest he can sue for each of the landlord's possible failures listed above. I discuss each of these different failures below.

A. Time to Sue for a Type-A Failure

As discussed at length in Mungall v. Garry: The Court of Appeals Misconstrues the 21-Day Clock in Minn. Stat. § 504B.178, the landlord's deadline to return or account for the deposit is three weeks after the later of the end date of the tenancy and the day the tenant gave the landlord her mailing address or delivery instructions. Three weeks is reduced to five days if the tenancy is terminated by condemnation.

Given that the landlord cannot breach Minn. Stat. § 504B.178, subdivision 3 until this three-week/five-day point, the poorly-drafted, last part of Minn. Stat. § 504B.178, subdivision 4 must refer to this three-week/five-day point plus a day as the day the tenant's Type A claim vests. Put another way, the phrase "after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3" in subdivision 4 becomes duplicative in a Type-A failure.

B. Time to Sue for a Type-B Failure

1. Analysis of the statute's language

This type of breach can only occur if there is a transfer of interest in the property. However, subdivision 4(3) says, "Any landlord who fails to … (3) transfer or return a deposit as required by subdivision 5 … after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, is liable to the **tenant.** [emphasis added]". Therefore, even though subdivision 5 primarily involves an obligation of the predecessor (original landlord) to successor (eventual landlord), subdivision 4(3) only gives the tenant the right to sue for the doubling penalty.

That said, if there is a transfer of interest, how can the predecessor in interest ("landlord" in subdivision 5) breach? There are two such situations:

> [Situation X] The predecessor never does the transfer to the successor under part (1) of subdivision 5 and never returns the deposit or accounts for the deposit under part (2) of subdivision 5, or does not do them within 60 days of the transfer of interest.
>
> [Situation Y] First, the deadline by which "the successor in interest is required to return or otherwise account for the deposit to the tenant" has come and gone. This is the three-week or five-day deadline briefly discussed above and at length in Mungall v. Garry: The Court of Appeals Misconstrues the 21-Day Clock in Minn. Stat. § 504B.178. The deadline facing the *predecessor in interest* is defined by acts of the tenant and the *successor in interest*. Second, by the end of this deadline the *predecessor in interest* has neither done the transfer to the successor under part (1) of subdivision 5 nor returned the deposit or accounted for the deposit under part (2) of subdivision 5.

In these two situations, how does the phrase "after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3" in subdivision 4 come into play?

In Situation Y, as discussed above, the successor in interest has been given the tenant's mailing address or delivery instructions. However, is this enough to satisfy subdivision 4's requirement – "after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3" – when the tenant is suing the predecessor? Note the clause in subdivision 5 saying "either of which shall relieve the landlord or agent [predecessor in interest] of further liability with respect to such deposit". The phrase "either of which" refers to the two escape routes set out in paragraphs (B)(1) and (B)(2) of subdivision 5. This indicates that when the predecessor has taken neither escape route by the applicable deadline, the predecessor is on the hook for the security deposit just like a successor in interest or a landlord in a non-succession situation. Therefore, in Situation Y, where the tenant is suing the predecessor prior to the 60-day deadline – i.e. is suing the predecessor similar to suing the successor –, the tenant probably has to follow the same rules regarding delivery instructions as when suing the successor or a landlord in a non-succession situation.

In situation X -- when the tenant sues the predecessor based on the 60-day deadline (probably during the tenancy but not necessarily) -- what is the tenant's obligation regarding giving the predecessor her "mailing address or delivery instructions"? That phrase should not be ignored. Duluth Firemen's Relief Ass'n v. City of Duluth, 361 N.W.2d 381, 385 (Minn. 1985) (it is a "basic maxim of statutory construction that a statute is to be construed, if possible, so that no word, phrase, or sentence is superfluous, void, or insignificant"). Therefore, the earliest the tenant could file such a suit would be after providing her mailing address or delivery instructions.

However, what about the next clause, "as required in subdivision 3"? Under Duluth Firemen's Relief Ass'n, that clause shouldn't be ignored either, but subdivision 3 imposes no requirement in a 60-day, succession-in-interest situation. Probably "as required in subdivision 3" is in the statute just to deal with situation Y. Perhaps the tenant can give her mailing address or delivery instructions and sue right away so long as the 60 days have also passed. This construction seems a bit odd but is neither absurd nor unreasonable, and thus might be allowed under Minn. Stat. § 645.17

I conclude that this part of the statute – Type B -- is ambiguous. The tenant has to give her mailing address or delivery instructions but it is unclear when after that she can sue.

Below I review the legislative history of this provision. The history is very interesting but not ultimately helpful in resolving the ambiguity.

2. Analysis of the statute's legislative history

a. Four relevant amendments to Minn. Stat. § 504B.178 since 1991

The relevant subdivisions of Minn. Stat. § 504B.178 -- subdivisions 3,4,5 and 7 -- have been amended four times since 1992, with the 1992 amendments being the ones relevant to the Type B situation.

In 2023, as discussed below in Part III.C, subdivision 4(4) relating to inspections was added.[1] In 2010, the $200 bad faith penalty in subdivision 7 was increased to $500.[2] In 1999, all the statutes in Minn. Stat. Chapters 504 and 566 were codified into a new Minn. Stat. Chap. 504B and what had been Minn. Stat. § 504.20 (1998) became Minn. Stat. § 504B.178 (1999).[3]

b. Minn. Stat. § 504B.178, subd, 4(2)-(3) had a somewhat complicated legislative history

The 1992 session law in question, 1992 Minn. Laws c 376, was a long omnibus housing bill with a somewhat complicated legislative history. The final bill that became law was 1991 SF 720, but three other bills were involved in the security-deposit legislation – HF 1002 (companion to SF 720), SF 951 and HF 714. SF 951 and HF 714 were shorter housing bills that included basically the same security-deposit provisions and were the bills that received substantial committee hearings before being folded into SF 720. The details are laid out in an extensive Appendix LH 1992-376.[4]

---

[1] 2023 Minn. Laws c 52 art 19 s 85

[2] 2010 Minn. Laws c 315 s 6

[3] 1999 Minn. Laws c 199 art 1 s 16 In some cases the recodification involved changes in language but recodification did not change the meaning of any statute. Occhino v. Grover, 640 N.W.2d 357,362 (Minn. App. 2002). The security-deposit statute happened to stay the same.

[4] This appendix repeats most of Appendix **2** in my prior blog, Mungall v. Garry: The Court of Appeals Misconstrues the 21-Day Clock in Minn. Stat. § 504B.178, but is more complete. The prior blog only dealt with Type A situations while this blog, and especially this part of this blog, also deals with Type B situations.

c. The policies behind the security-deposit provisions of SF 720 and related bills

The original bills included some security-deposit provisions in Article 1 and some in Article 4.

As explained in committee testimony, the Article-1 amendments were just intended to shorten the three-week clock for return of the deposit to five days when the tenant was forced out by condemnation. See Appendix LH 1992-376, Endnote 10½ & Endnote 16.

As explained in committee testimony by John Herman about the Article-4 amendments, the concern was mostly involuntary transfers of ownership where a landlord would walk away from a money-losing property and a successor would get it via foreclosure or the like. The transferor (bad landlord) -- among other bad things -- would delay turning over the deposits. Under existing law, the transferee/successor would be stuck owing the deposits to the tenants when they eventually moved out (still the law today). Article 4 made three changes re security-deposits: [1] It shortened the transfer time from "reasonable time" to 60 days; a lot of judges were allowing many months of "reasonable time". [2] It allowed the successor, as well as tenants, to sue for the doubling penalty. [3] It allowed the successor to sue for all the deposits plural. Together, #2 and #3 would allow the successor to sue for all the of deposits plus all the doubling penalties in one lawsuit. This would be more cost effective than individual tenants suing one at a time. Also, tenants might just sue the successor one at a time or probably not even need to sue since the successor was a law abider. These three provisions gave the successor an avenue to semi-quickly collect from the predecessor what the successor should have received had the predecessor not been a jerk. See Endnote 12 in Appendix LH 1992-376

d. The pathway from initial bills to final enactment of 1992 Minn. Laws ch.376

Because of policy battles unrelated to security deposits, the House and Senate produced different versions of SF 720 and so a conference committee was appointed. It issued what I will call the First Conference Report in May 1991. The parts of this report related to

security deposits included the original bills' security-deposit language with one minor change.[5] Here are the security deposit parts of the First Conference Report.[6]

ARTICLE I

LANDLORD AND TENANT

....

Sec. 5. Minnesota Statutes 1990, section 504.20, subdivision 3, is amended to read:

Subd. 3. Every landlord shall, within three weeks after termination of the tenancy or within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant, and after receipt of the tenant's mailing address or delivery instructions, return the deposit lo the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof. It shall be sufficient compliance with the time requirement of this subdivision if the deposit or written statement required by this subdivision is placed in the United States mail as first class mail, postage prepaid, in an envelope with a proper return address, correctly addressed according to the mailing address or delivery instructions furnished by the tenant, within the time required by this subdivision. The landlord may withhold from the deposit only amounts reasonably necessary:

(a) To remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

(b) To restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

In any action concerning the deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord.

---

[5] The Senate had added the word "after" at two points in Article 1. As discussed at length in my prior blog, Mungall v. Garry: The Court of Appeals Misconstrues the 21-Day Clock in Minn. Stat. § 504B.178, these two additions were of no real significance. They are not relevant to the legislative history of what eventually became Minn. Stat. § 504.20, subdivision 4(3)(1992).

[6] Underlined language is language added by the session law, struck-through language is language deleted by the session law, and the rest is language in the pre-1992 statute.

Sec. 6. Minnesota Statutes 1990, section 504.20, subdivision 4, is amended to read:

Subd. 4. Any landlord who fails to provide a written statement within three weeks of termination of the tenancy or within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant, and after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall be liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.

ARTICLE 4

ASSIGNMENT OF RENTS AND RECEIVERSHIP

Section I. Minnesota Statutes 1990, section 504.20, subdivision 4, is amended to read:

Subd. 4. Any landlord who fails to provide a written statement within three weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, ~~shall be~~ or fails to transfer or return a deposit as required under subdivision 5, is liable to the tenant or the successor in interest for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty. in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.

Sec. 2. Minnesota Statutes 1990, section 504.20, subdivision 5, is amended to read:

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within ~~a reasonable time~~ 60 days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenant, whichever occurs first, do one of the following acts, either of which shall relieve the landlord or agent of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to

the landlord's successor in interest and thereafter notify the tenant of such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3. with interest thereon as provided in subdivision 2, to the tenant.

Sec. 3. Minnesota Statutes 1990, section 504.20, subdivision 7, is amended to read:

Subd. 7. The bad faith retention by a landlord of ~~the~~ a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 for each deposit in addition to the damages provided in subdivision 4. If the landlord has failed to comply with the provisions of subdivision 3 or 5, retention of ~~the~~ a deposit shall be presumed to be in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.

The First Conference Report did not pass the House and the conferees met again ten months later. On March 23, 199**2**, they issued a Second Conference Report. The Second Conference Report passed the Senate on March 23, 199**2** and the House on March 24, 199**2**. The governor signed this bill – the Second Conference Report – and it became 1992 Minn. Laws ch 376. The security-deposit provisions in the Second Conference Report, and thus in the session law, read as follows:

ARTICLE 1

....

Sec. 5. Minnesota Statutes 1990, section 504.20, subdivision 3, is amended to read:

Subd. 3. (a) Every landlord shall~~,~~:

(1) within three weeks after termination of the tenancy; or

(2) within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant, and after receipt of the tenant's mailing address or delivery instructions, return the deposit to the tenant, with interest thereon as above provided, or furnish to the tenant a written statement showing the specific reason for the withholding of the deposit or any portion thereof.

(b) It shall be sufficient compliance with the time requirement of this subdivision if the deposit or written statement required by this subdivision is placed in the United States mail as first class mail, postage prepaid, in an envelope with a proper return address, correctly addressed according to the mailing address or delivery instructions furnished by the tenant, within the time required by this subdivision. The landlord may withhold from the deposit only amounts reasonably necessary:

~~(a)~~ (1) to remedy tenant defaults in the payment of rent or of other funds due to the landlord pursuant to an agreement; or

~~(b)~~ (2) to restore the premises to their condition at the commencement of the tenancy, ordinary wear and tear excepted.

(c) In any action concerning the deposit, the burden of proving, by a fair preponderance of the evidence, the reason for withholding all or any portion of the deposit shall be on the landlord.

Sec. 6. Minnesota Statutes 1990, section 504.20, subdivision 4, is amended to read:

Subd. 4. Any landlord who fails to:

(1) provide a written statement within three weeks of termination of the tenancy and;

(2) provide a written statement within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant, or

(3) transfer or return a deposit as required by subdivision 5,

after receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, shall be liable to the tenant for damages in an amount equal to the portion of the deposit withheld by the landlord and interest thereon as provided in subdivision 2, as a penalty, in addition to the portion of the deposit wrongfully withheld by the landlord and interest thereon.

Sec. 7. Minnesota Statutes 1990, section 504.20, subdivision 5, is amended to read:

Subd. 5. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within ~~a reasonable time~~ 60 days of termination of the interest or when the successor in interest is required to return or otherwise account for the deposit to the tenant, whichever occurs first, do one of the following acts, either of which shall relieve the landlord or agent of further liability with respect to such deposit:

(a) Transfer such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the landlord's successor in interest and thereafter notify the tenant of such transfer and of the transferee's name and address; or

(b) Return such deposit, or any remainder after any lawful deductions made under subdivision 3, with interest thereon as provided in subdivision 2, to the tenant.

Sec. 8. Minnesota Statutes 1990, section 504.20, subdivision 7, is amended to read:

Subd. 7. The bad faith retention by a landlord of ~~the~~ a deposit, the interest thereon, or any portion thereof, in violation of this section shall subject the landlord to punitive damages not to exceed $200 for each deposit in addition to the damages provided in subdivision 4. If the landlord has failed to comply with the provisions of subdivision 3 or 5, retention of ~~the~~ a deposit shall be presumed to be in bad faith unless the landlord returns the deposit within two weeks after the commencement of any action for the recovery of the deposit.

The changes highlighted in yellow relate to a Type A situation; the others to a Type B situation.

e, The differences between the First Conference Report and the Second Conference Report

Most of the differences had nothing to do with security deposits

The major differences between the First Conference Report and the Second Conference Report did not involve security deposits. First, entire Articles in the First Conference Report were deleted. Second, all the provisions in Article 2, entitled “UNLAWFUL

DETAINER", of the First Conference Report were moved into Article 1 of the Second Conference Report, entitled "LANDLORD AND TENANT". These full-article changes caused Article 4 in the First Conference Report, entitled "ASSIGNMENT OF RENTS AND RECEIVERSHIP", to be numbered as Article 2 of the Second Conference Report.

Differences relating to security deposits

The other changes from the First Conference Report to the Second Conference Report are relevant to Situation B. The amendment to subdivision 3 of Minn. Stat. § 504.20 – the addition of the five-day clock – in the First Conference Report arrived intact into the Second Conference Report.[7] And part of the language related to succession in interest arrived intact into the Second Conference Report, to wit the amendments to subdivisions 5 and 7 of Minn. Stat. § 504.20.

However, the amendments to subdivision 4 of Minn. Stat. § 504.20 in the First Conference Report were changed significantly. As quoted above, the First Conference Report's Article 4 (RENTS AND RECEVERSHIP) language amended subdivision 4 as follows:

> Any landlord who fails to provide a written statement within three weeks of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, as required in subdivision 3, ~~shall be~~ or fails to transfer or return a deposit as required under subdivision 5, is liable to the tenant or the successor in interest for damages… [red color added]

This concept was moved – but only partially – into Article 1 (LANDLORD AND TENANT) of the Second Conference Report. The amendments to subdivision 4 now read:

> Subd. 4. Any landlord who fails to:
>
> (1) provide a written statement within three weeks of termination of the tenancy ~~and~~ ;
>
> (2) provide a written statement within five days of the date when the tenant leaves the building or dwelling due to the legal condemnation of the building or dwelling in which the tenant lives for reasons not due to willful, malicious, or irresponsible conduct of the tenant, or

[7] Some paragraph indents and the like added for easier reading but the words were the same.

> **(3) transfer or return a deposit as required by subdivision 5,**
>
> after receipt of the tenant's mailing address or delivery instructions. as required in subdivision 3, shall be liable lo the tenant for damages… [**bold blue** color added]

Compare the red and **blue** clauses. The Second Conference Report made a major change by eliminating the "or the successor" language contained in the First Conference Report. Also, by wedging the new (**blue**) language between the five-day clause and the "after receipt of the tenant's mailing address or delivery instructions as required in subdivision 3" clause, the Second Conference Report seems to have added a delivery-instruction requirement that was not in Article 4 of the First Conference Report.

> f. The subdivision-4 language in the Second Conference Report resulted in two unfortunate real-world consequences.

The second change (placement of the blue clause) is mostly why the current statute is unclear re the timing of delivery instructions in a Type B (succession) situation. The first change eviscerated the core of what the original Article 4 was supposed to accomplish – giving the successor a doubling-penalty hammer to make the predecessor hand over the deposits within 60 days.

There is no available recording of the deliberations of the second conference since it met "informally".[8] I can only guess why they did what they did. One thing that seems very likely is that the conferees realized that the First Conference Report had two versions of subdivision 4. That had to be fixed. Indeed, the legislative analyst's summary of the draft conference report stated:

> The following changes were made to the original conference report from May, 1991:
>
> > **Article 1** – Combines section 6, article 1 and section 1, article 4 into new article 1, section 6. Because both sections amended Minnesota Statutes 504.20, subdivision 4, the language changes were combined. [emphasis in original] [9]

My guess – and it is only a guess – is that then the conferees (or maybe in reality not the conferees but just the analyst) decided to add the blue language inside the three-

---

[8] See Appendix LH 1992-376, Endnote 4½ at PDF page 27, minutes of the 1992 conference committee, March 11, 1992 memo from conference co-chair Karen Clark to conference members

[9] See Appendix LH 1992-376, Endnote 4½ at PDF page 33, March 10, 1992 memo from Legislative Analyst Kathy Novak to Representative Clark.

week/five-day clock language as a quick fix without giving it a lot of thought. Before the addition of the blue language this passage only concerned landlord vs tenant, perhaps making the conferees or the analyst decide that the "or successor in interest" language didn't belong.

Alternatively, the conferees might have made a policy decision to screw over successors in interest. It's hard to imagine the predecessors – described in John Herman's testimony as absentee, deadbeat landlords – having a more powerful lobby than the successors (generally good landlords). Indeed, the conferees did not disturb the 60-day language in subdivision 5 or the addition of a 60-day breach plus the multiple-deposit language in subdivision 7 (the bad-faith penalty subdivision.) If the conferees wanted to screw over successors why not mess with those amendments as well?

g. Construction by the Court of Appeals

Of course, standard statutory construction says a court cannot make such guesses. The final session law eliminated the right of successors to sue predecessors for the doubling penalty. A court has to consider that as some evidence of the entire statute's meaning.

One appellate court has dealt with this issue. Townridge Apts v Silver Crest Partnership, 1997 WL 769489, File No. C6-97-1002 (Minn. Ct. App. 12/16/1997) (nonprecedential), The predecessor, Silver Crest, did exactly what the proponents of the original 1991 bill feared; it withheld the deposits from the successor, Townridge, for well over 60 days. Townridge, realizing that subdivision 4 had no hammer, sued for bad-faith damages of $200 (then the cap) per deposit under subdivision 7. The district court awarded those $200-per-deposit damages but the appellate court reversed, reasoning as follows:

> A reading of the statute as a whole leads us to conclude that the provision allowing punitive damages was enacted to protect tenants rather than landlords who are their successors in interest. Minn. Stat. § 504.20, subd. 7, specifically refers to the punitive damages as being "in addition to the damages provided in subdivision 4." Under subdivision 4, a landlord is liable "to the tenant for damages." Minn. Stat. § 504.20, subd. 4 (1996).
>
> Further, a basic presumption in ascertaining legislative intent leads us to conclude respondent is not entitled to an award of punitive damages. Because appellants violated the statute by returning the security deposits late, any aggrieved tenants could have sued for their deposits and included a request for punitive damages. Allowing respondent to recover punitive damages from appellants for the same deposits would be a result not reasonably intended by the legislature.

Id. at *3 (end of Part II).

Without the benefit of the legislative history discussed above, the idea that subdivision 4 helps the court construe subdivision 7 makes sense. However, the Townridge court was somewhat wrong about the import of the phrase "in addition to the damages provided in subdivision 4." Bad-faith damages are usually awarded for reasons having nothing to do with subdivision 4. The most common reason for an award of subdivision-7, bad-faith punitive damages is the landlord's deduction for false reasons (e.g., deducting for a broken oven that the landlord knew was not broken). The Townridge court was also mistaken about the importance of the fact that "aggrieved tenants could have sued for their deposits and included a request for punitive damages." That is not the problem Townridge faced. Its problem was that until Silver Crest turned over the deposits, Townridge had to reach into its own pocket for the money to pay tenants instead of using the deposit money Silver Crest was unfairly withholding from Townridge.

h. Summary of the 1991-1992 legislative history

The 1991-1992 legislative history is fascinating but does not resolve the statute's ambiguity. The tenant has to give her mailing address or delivery instructions but it is unclear when after that she can sue.

C. Time to Sue for a Type-C Failure

1. Analysis of the statute's language

Unlike Type A and Type B failures, a Type C failure has nothing to do with the time the security deposit is returned, transferred, or accounted for. Also, it is only tangentially related to whether the landlord has overstated damages or unpaid bills and deducted from the deposit accordingly. Instead, a Type C failure occurs when the landlord doesn't give the tenant a chance for an initial "inspection" during the first 14 days of the tenancy, a chance for a final "inspection" during the last 5 days of the tenancy, or both. Detailed requirements for timing and conducting the inspections are set out in Minn. Stat. § 504B.182.

Obviously, a tenant's Type-C claim doesn't vest until the landlord breaches either inspection requirement. As discussed above, under Duluth Firemen's Relief Ass'n the tenant very likely also has to give her mailing address or delivery instructions for her claim to vest.

What about the "as required in subdivision 3" clause. Subdivision 3 is about returning the deposit. When the proper inspection isn't done during the first 14 days of the tenancy,

neither side is thinking about returning the deposit or suing over it but the landlord has breached. Can the tenant sue on day 15 for this Type C failure? The suit would be for the doubling penalty but not the deposit itself.

In defending such a suit, the landlord could point to the language at the end of subdivision 4, "in addition to the portion of the deposit wrongfully withheld by the landlord". The landlord hasn't yet withheld any deposit. Indeed, he might eventually return all the deposit. Or he might eventually deduct all the $700 deposit because the tenant completed ruined a $1000 refrigerator beyond ordinary wear and tear. In these cases, arguably the landlord has not wrongfully withheld the deposit. On the other hand, the lack of an initial inspection might have prevented the tenant from noticing a problem with something else like the oven, damage the landlord eventually claimed, incorrectly, that the tenant caused.

Therefore, the tenant deserves a hammer to force the landlord to do the initial inspection regardless what happens to the deposit. Indeed, in the old days before either Type B or Type C failures were added to subdivision 4, a landlord who failed under Type A was liable to the tenant for the doubling penalty even if the landlord returned the entire deposit on day 22 or the landlord kept an entire $700 deposit because the tenant completed ruined a $1000 refrigerator beyond ordinary wear and tear deposit. There was a small bit of testimony in committee supporting the idea that the tenant's claim for lack of an initial inspection vests on day 15.[10]

On the other hand, the fact that the penalty for disobeying Minn. Stat. § 504B.182 is in Minn. Stat. § 504B.178 – the security-deposit statute -- indicates that a suit for the doubling penalty based on section 504B.182 probably must wait until the tenant has a claim related to the security deposit. Furthermore, Minn. Stat. § 504B.182, subd. 1 says the "initial inspection of the residential unit [is] for the purposes of identifying existing deficiencies in the rental unit to avoid deductions for the security deposit of the tenant at a future date". And, subd. 2 says, "The purpose of the move-out inspection shall be to allow the tenant an opportunity to remedy identified deficiencies …in order to avoid deductions from the security deposit." Thus, a 504B.182 claim would arise no earlier than the end of the tenancy in a non-succession situation (and maybe not until the three-week clock has run) or after day 60 in a succession-in-interest situation.

[10] Appendix Sakhardande contains a transcript of this testimony and details of where and when it was given.

2. Analysis of the statute's legislative history

The legislative history of the inspection provisions in Minn. Stat. § 504B.178 and Minn. Stat. § 504B.182, 2023 Minn. Laws c 52 art 19 s 85-86, sheds a tiny bit of light on the issue.

Sections 85 and 86 were part of a very huge judiciary omnibus bill, SF 2909. Parts F-J of Article 19 of that bill, a total of 38 sections, incorporated similar, but not identical, huge[11] omnibus housing bills, SF 1298 and HF 917. In turn, those omnibus housing bills incorporated smaller housing bills, including two bills that contained the security-deposit language, SF 1091 and HF 2279.

The written legislative history of these bills is available at https://www.leg.mn.gov/leg/legis . This webpage has links to relevant documents. Using those links, recordings of hearings and floor debates can be identified and in turn accessed at https://www.house.mn.gov/audio/default.asp . I read that written history and I listened to recordings of relevant floor debates and of relevant committee hearings.[12]

The security-deposit language in the original bills as introduced, SF 1091 and HF 2279, was left unchanged in all the omnibus bills. The only meaningful testimony on security-deposit language was during the hearings on these bills, and even then the testimony was brief and did not touch on the damage provisions that became 2023 Minn. Laws c 52 art 19 s 85. Nothing was said on the floor about either 2023 Minn. Laws c 52 art 19 s 85 or 2023 Minn. Laws c 52 art 19 s 86.

A summary by committee staff made available. A copy was provided in the Judiciary Committee's hearing on HF 917[13]. Here is the portion of the summary about the security-deposit language:

> **7. Damages.**
>
> Provides that along with other provisions related to the return of a damage deposit on a residential rental unit, the landlord can be liable for monetary damages to a tenant if they do not do an initial or final inspection as required in section 3.

[11] Huge, but unlike SF 2909, not *very* huge!

[12] This was a bit mind numbing. I don't think I missed anything important but the reader is more than welcome to check.

[13] A copy is available at https://www.house.mn.gov/hrd/bs/93/HF0917.pdf .

8. Initial and final inspection required.

> **Subd. 1. Initial inspection.** Requires a landlord to offer an initial inspection of the unit to identify deficiencies or clarify the state of the unit related to the damage deposit.
>
> **Subd. 2. Move-out inspection.** Before either the tenant or landlord ends the tenancy, the landlord shall give the tenant a written notice about the right to do a walk-through inspection of the unit within five days of the tenant moving out to allow the tenant a chance to remedy any deficiencies or avoid having money taken out of the deposit.
>
> **Subd. 3. Other requirements under the law.** Explains that this section on inspections does not change any other rights or obligations under Chapter 504B for landlords and tenants.
>
> **Subd. 4. Waiver.** Prohibits attempts to waive the inspection requirements in this section.

(bold emphasis in original, underline emphasis added). During the hearing in the House Committee on Housing staff counsel made an oral presentation that was nearly identical; probably she was reading from the same summary.

The summary's use of the highlighted word "return" supports the idea that a 504B.182 claim would arise no earlier than the end of the tenancy in a non-succession situation or after day 60 of a succession in interest occurs. That is the closest the legislative history gets to the timing of a Type C lawsuit.

In conclusion, the 2023 legislative history does not resolve the statute's ambiguity. The tenant has to give her mailing address or delivery instructions. She probably has to wait until after the 60-day clock has run the tenancy has ended or but it is somewhat unclear when after that she can sue.

IV. OVERALL CONCLUSION

Two parts of Minn. Stat. § 504B.178, subd. 4 -- [i] the part governing the penalty for breach of Minn. Stat. § 504B.178, subd. 5 (succession rules); and [ii] the part governing the penalty for breach of section 504B.182 -- are ambiguous. It is unclear how soon after providing the defendant with her mailing address or delivery instructions the tenant can start a lawsuit based on Minn. Stat. § 504B.178, subd. 4(3) or Minn. Stat. § 504B.178, subd. 4(4).

The optimal solution is for the legislature to rewrite the statute and eliminate ambiguities. In the meantime, the courts will have to do their best to construe the statute.