A Successor in Interest Should Have a Claim for Bad-Faith Retention of Security Deposits under Minn. Stat. § 504B.178, Subd. 7. *Townridge Apts. v. Silver Crest* Was Wrongly Decided.

I. FACTS

The material facts in Townridge Apts v Silver Crest Partnership, 1997 WL 769489, File No. C6-97-1002 (Minn. Ct. App. 12/16/1997) (nonprecedential) were as follows:[1]

Townridge owned an apartment complex of about 68 units[2] in New Brighton, MN. On December 12, 1986, sold the complex to Silver Crest on a contract for deed, which required Silver Crest to pay Townridge $10,875 per month until December 29, 1996, when a balloon payment was due, plus property taxes. Silver Crest fell behind on the property tax payments. Townridge served it with a notice of cancellation of the contract for deed on April 8, 1996. Silver Crest did not cure the default, resulting in fee title to the complex reverting to Townridge on June 8, 1996 per Minn. Stat. § 559.21.

In the meantime, Silver Crest had collected $23,678 in rent payments for June from some of the tenants plus security deposits, 58 of which had been made by current tenants. On June 13, 1986, Silver Crest paid Townridge $2,590, apparently related to rents. A few days later, Townridge's attorney sent Silver Crest a letter demanding it return the deposits plus 22/30 of the collected June rents to Townridge.

On August 22, 1996, Townridge served a Summons and Complaint on Silver Crest. The complaint essentially had two counts. One was for 22/30 of the June rents. The other was for the outstanding security deposits plus 58 x $200 = $11,600 for bad faith damages under Minn. Stat. §504.20, subd. 7 (1994) which read:

> Subd. 7. The bad faith retention by a landlord of 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 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.

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[1] Some of these facts are in the appellate opinion. Others are in the appellate briefs, including the appellant's appendix, available at Appendix Townridge Full.

[2] This one fact is based on a phone call to the property manager of this complex which I made in April 2026. It is included for context and not legal importance.

On September 25, Silver Crest's attorney wrote Townridge's attorney that it will start returning deposits on October 1. On September 30, Townridge's attorney wrote Silver Crest's attorney that Townridge had already paid out deposits to some tenants who had moved out after June 8. Finally, on October 31, a Silver Crest subsidiary sent checks to each tenant for her deposit plus accumulated interest along with a letter telling the tenant to "refund" (pay) the money to Townridge if the tenant had already had her deposit refunded.

Both sides moved the district court for summary judgment. The court granted Townridge summary judgment for $15,563.39 on its claim for 22/30 of the June rents plus $11,600 for bad faith damages under Minn. Stat. §504.20, subd. 7. For some reason, Townridge's claim based on payments it had made to tenants post June 8 for their deposits was not included in the judgment or, apparently, in Townridge's motion for summary judgment.

Silver Crest appealed both rulings. This essay does not discuss the rent claim. Silver Crest's only defense on the Minn. Stat. §504.20 claim, in both district court and the court of appeals, was that only tenants, and not successors in interest (i.e. Townridge), had standing to make a claim for the bad-faith damages in Minn. Stat. §504.20, subd. 7. The Court of Appeals affirmed the district court on the 22/30 June rent claim but reversed on the Minn. Stat. §504.20, subd. 7 claim. It agreed with Silver Crest that a successor in interest did not have standing under that subdivision.

II. ANALYSIS

Minn. Stat. §504.20 (1994) has been amended several times since Townridge was decided. In 1999, along with all of Minn. Chap. 504 and 566, Minn. Stat. §504.20 was recodified. It is now numbered Minn. Stat. §504B.178. That recodification made no changes in meaning.[3] In 2010, the $200 cap in subdivision 7 was increased to $500[4]; that change does not change the analysis of the Townridge case.[5] The other amendments had nothing to do with subdivision 7.[6] Therefore,

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[3] For some statutes 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 nearly word-for-word the same. Compare Minn. Stat. §504.20 (1994) or Minn. Stat. §504.20 (1998) to 1999 Minn. Laws c 199 art 1 s 16 .

[4] 2010 Minn. Laws c 315 s 6.

[5] In inflation-adjusted dollars, the monetary change is pretty minor. $200 in 1996 is worth about $420 today. https://www.usinflationcalculator.com/inflation/consumer-price-index-and-annual-percent-changes-from-1913-to-2008/

[6] Three session laws changed the interest rates on deposits. Two amended subdivision 8 of Minn. Stat. §504B.178. One adjusted the statutory reference in subdivision 2. The 2023 law involved a new requirement for move-in and move-out inspections and amended Minn. Stat. §504B.178, subdivision 4 accordingly. See Minn. Stat. Annotated §504B.178, Historical and Statutory Notes,

to make the discussion of some legislative history easier to follow, the analysis of Townridge below uses the 1994 version of Minn. Stat. §504.20 unless stated otherwise.

As discussed below, I believe the Court of Appeals was wrong. Successors in interest do have standing to sue under Minn. Stat. § 504B.178, subd. 7 (previously Minn. Stat. §504.20, subd. 7).

A. The plain language of Minn. Stat. §504.20 (now Minn. Stat. §504B.178)

The first sentence of Minn. Stat. §504.20, subd. 7 is the core of the subdivision. It says, "The bad faith retention by a landlord of 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." The phrase "this section" means all of Minn. Stat. §504.20.[7] Only four subdivisions in section 504.20 discuss "retention … of a deposit" -- subdivisions 3,4,5, and 6.

Subdivision 3 only involves tenants and their landlords and says nothing about successors in interest. Subdivision 4 creates a "doubling penalty"[8] for certain misdeeds but only affords tenants the right to the doubling penalty.

This leaves subdivisions 5 and 6 as subdivisions that might afford successors a bad-faith claim based on "bad faith retention by a landlord of a deposit". Subdivision 5 states:

> 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 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

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or drill down from the "History" part of Minn. Stat. §504B.178 (2025), available at https://www.revisor.mn.gov/statutes/cite/504B.178 .

[7] This is pretty obvious, but as confirmation, Minn. Stat. § 645.46 et seq requires the same meaning for the word "section".

[8] Subdivision 4 says, "Any landlord who fails [to do certain things] … *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."* This is not a model of clarity but in most cases the italicized clause effectively doubles the deposit + interest. In this essay I call this the "doubling penalty"..

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

Thus subdivision 5 requires the predecessor in interest ("landlord" in subdivision 5) to turn over the deposit plus interest to each tenant or to the successor in interest within a certain time period. That period is the lesser of 60 days or when a tenant who moves out would be due the deposit (normally three weeks after moving out per subdivision 3). If it misses the deadline, the predecessor has retained the deposit in violation of this section.

Subdivision 6 shows why the successor cares whether the predecessor meets the deadline. It states:

> Subd. 6. Upon termination of the landlord's interest in the premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord's successor in interest shall have all of the rights and obligations of the landlord with respect to such deposit, except, that if tenant does not object to the stated amount within 20 days after written notice to tenant of the amount of deposit being transferred or assumed, the obligation of the landlord's successor to return such deposit shall be limited to the amount contained in such notice. Such notice shall contain a stamped envelope addressed to landlord's successor and may be given by mail or by personal service.

Under subdivision 6, when a tenant moves out at the end of her tenancy and gives her mailing address, the successor "shall have all of the rights and obligations of the landlord with respect to such deposit" – i.e. he must pay the tenant the deposit plus interest even if he never got it in the first place. The only exceptions to this rule are if the predecessor has transferred the deposit + interest to the tenant or the successor per subdivision 5. If the predecessor paid the tenant, the tenant has no more claim for the deposit; if the predecessor paid the successor, the successor can use this money to pay the tenant. Even failure by the predecessor to meet the subdivision-5 deadline matters to the successor because by the time the predecessor eventually makes payments, the successor will have reached into his own pocket pay some departing tenants and incurred associated costs.

The successor cares a lot more about subdivision 5 than a tenant. In a sense, the tenant doesn't care if the predecessor obeys subdivision 5. She might even be better off if it doesn't. Under subdivision 6, when she moves out she has two pockets to collect from – the innocent successor and the guilty predecessor.

Therefore, retention of a deposit (+ interest) by a predecessor in violation of subdivision 5 harms the successor. This clearly gives the successor a claim for the deposits held by the predecessor.

Otherwise, the duty to obey the retention/refund rule would be meaningless. And, if the retention was in bad faith, then per subdivision 7 the successor has a claim for up to $200 for each deposit.[9]

The language of subdivision 7 provides a secondary indication that the successor has a claim for the bad-faith $200. Note that the claim is for up to "$200 for each deposit", not "$200 for the deposit". Generally, a tenant has just one deposit. It is a predecessor who usually has multiple deposits.

B. The legislative history of Minn. Stat. §504.20 (now Minn. Stat. §504B.178)

The legislative history of Minn. Stat. §504.20 from the 77th legislative session provides strong evidence supporting the plain-language analysis above. That legislature passed and the governor signed a large housing bill that was enrolled as 1992 Minn. Laws c 376. It amended subdivisions 3,4,5 and 7 in the prior version of section 504.20. As set out above (footnote 6 and surrounding text), the 1992 law on security deposits remains intact today.

1. Two groups advocated separately for different changes to Minn. Stat. §504.20

The detailed history of 1992 Minn. Laws ch. 376 is set out in Appendix LH 1992-376. The amendments to subdivisions 3,4,5 and 7 resulted from the confluence of two lobbying groups – tenant advocates and successor advocates. The original bills in each chamber included language in Article 1 that interested the former group and language in Article 4 that interested the latter group.[10]

2. Proposed amendments by tenant advocates (in Article 1 of the original bills)

Tenant advocates just wanted the time for return of the deposit to tenants to be shortened from three weeks to five days if the tenancy was ended by condemnation. As explained in testimony by Paul Onka, a legal-aid lobbyist, and Senator Larry Pogemiller, plus a bill summary by Senate counsel, the idea was that a condemnation created a situation where the tenant needed the deposit money quickly to use at her next apartment.[11] They proposed amending subdivisions 3 and 4 as

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[9] The second sentence in subdivision 7 doesn't change this analysis in either direction. This sentence merely creates a presumption that can help the claimant (successor or tenant) prove bad faith. Standing to sue for the bad faith $200 per deposit is based on subdivision 5 and the first sentence of subdivision 7.

[10] As fully set out in Appendix LH 1992-376, the final bill, SF 720, that became law, was a very large housing bill that incorporated other large housing bills, including HF 714 and SF 915. As introduced, all these bills had identical security-deposit language. Appendix LH 1992-376, PDF pages 9-14, shows the language in question.

[11] Endnote 1 includes transcripts of their testimony on the security-deposit parts of Article 1 plus a summary by Senate counsel.

follows (underline shows new language and strikeout shows deleted language) and the following language was included in Article 1 of the bills as introduced:

[The beginning of 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 …[12]

[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][13] 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.[14]

3. Proposed amendments by successor advocates (in Article 4 of the original bills)

Advocates for successors in interest wanted protection from predecessors who held unto deposits indefinitely after ownership transferred to a successor. This was especially a problem with involuntary transfers of ownership following a mortgage foreclosure, a contract-for-deed cancellation or a similar transfer. John Herman, a lobbyist from the bar association, explained their ideas.[15] The successors wanted three related amendments – one setting a time certain for

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[12] Original bills as introduced, Article 1, Section 4, available in Appendix LH 1992-376 at PDF page 10.

[13] As discussed at length in a prior blog, later in the process the word "after" was added between "and" & "receipt".

[14] Original bills as introduced, Article 1, Section 5, available in Appendix LH 1992-376 at PDF page 11.

[15] Endnote 2 includes a transcript of Herman's testimony on the security-deposit parts of Article 4. He started by commenting on the many landlords essentially walking away from buildings but collecting and keeping as much rent and other money they could from the tenants. Endnote 2, lines 25-27, and passim.

predecessors to turn over deposits and two affording successors the right to sue for different kinds of penalties if the predecessor missed the deadline.

Regarding the first goal, predecessors were holding deposits for many months. Some judges were allowing this, deeming many months to be "a reasonable time". The successors wanted a time certain and 60 days seemed fair.[16] They proposed amending subdivision 5 and the following language was included in Article 4 of the bills as introduced:

[The beginning of 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:[17]

Second, successors wanted hammers to get predecessors to obey the law. Sections 1 and 3 of the bill, amending subdivisions 4 and 7, were meant to provide two similar but separate hammers. Herman testified as follows:

> The first section deals with the problem of when a landlord has lost the property back to a lender or to a contract for deed vendor but fails to give back to the new owner all of the security deposits of the tenants. The way this section works now only the individual tenant can sue, and frequently individual tenants don't have enough money at risk to warrant going after the landlord who's holding on to maybe as many as 20 or 30 or 40 security deposits, but and is not paying them to the new owner. What this section [amending subdivision 4] would do is it would allow a new owner who purchases a property, receives it back in foreclosure or gets it back in a contract cancellation to sue for all the security deposits in one bundle, which would make it a worthwhile effort for a landlord to get the tenants money back as a way of being able to pass it on to the to the tenants in due course when it is the proper time. It prevents a windfall to a person who is currently able to avoid paying the money back because there's no good remedy. [emphasis added][18]

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[16] Endnote 2, lines 75-92.

[17] Original bills as introduced, Article 4, Section 2, available in Appendix LH 1992-376 at PDF pages 12-13.

[18] Endnote 2, lines 64-75.

and then a bit later as follows:

> What Section 3 [amending subdivision 7] does is it provides for a penalty of $200. It currently provides a penalty of up to $200 for a violation of the statute in terms of not paying the money over to the tenant or to the successor in interest. What this does is it provides that the $200 is for each deposit. So if he were to withhold a dozen deposits, it increases the amount of liability. It's a remedial change to try to encourage compliance with the statute[19]

Therefore, the following language was included in Article 4 of the bills as introduced, allowing the successor to sue for the doubling penalty (first hammer):

[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.[20]

And the following language was also included in the bills (second hammer):

[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. [21]

Adding "for each deposit" and changing "the deposit" to "a deposit", in the first sentence of subdivision 7 would allow the successor to sue for up to $200 for each deposit the predecessor

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[19] Endnote 2, lines 92-97

[20] Original bills as introduced, Article 4, Section 1, available in Appendix LH 1992-376 at PDF page 12.

[21] Original bills as introduced, Article 4, Section 3, available in Appendix LH 1992-376 at PDF page 13.

retained in bad-faith in violation of subdivision 5, not just for a single $200. In Herman's example, the successor could sue for "dozens of deposits" in one lawsuit under subdivision 7. Changing "subdivision 3" to "subdivision 3 or 5" and changing "the deposit" to "a deposit" in the second sentence ensured that the bad-faith presumption benefited successors as well as tenants.

4. Progress of the amendments in 1991 (first half of legislative session)

The large House and Senate bills had a variety of differences unrelated to security deposits and so they went to conference committee in May 1991. All five of above proposals in the original bills made it into the First Conference Report issued in May 1991.[22] This report included intact the amendments to subdivisions 3, 5 and 7, plus both the subdivision-4 amendment proposed by the tenant lobbyists (marked with one green star, ★, above) and the subdivision-4 amendment proposed by the successors (marked with two green stars, ★★, above)

5. Progress of the amendments in 1992 (second half of legislative session)

The Senate did not approve the First Conference Report. In March 1992, the conferees met again and issued the Second Conference Report.[23] A fair number of changes were made to parts of the bill unrelated to landlord-tenant law, including moving most of Article 4 to Article 2. As to the section-504.20 amendments, three were kept intact and placed within Article 1 – the subdivision-3 amendment (tenant proposal) plus the subdivision-5 and subdivision-7 amendments (successors proposals).

The conferees apparently finally realized that the final session law could not include two different subdivisions 4. They met "informally" and there is no record of their thinking except for their minutes, which stated a need avoid two different subdivisions 4.[24] I guess, but cannot prove, that faced with a large bill and not much time, the main authors carelessly cobbled together a final version of subdivision 4. Possibly this was the result of a careful compromise.[25] Regardless, their product was as follows:

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[22] Reprinted in 1991 Journal of the Minnesota Senate 5392 et seq.

[23] Reprinted in 1992 Journal of the Minnesota Senate 6626 et seq.

[24] Appendix LH 1992-376 at PDF page 27

[25] I reached out to lobbyist John Herman, principal House author and conferee Rep. Karen Clark, and the analyst who worked on the Second Conference Report, Kathy Novak. None of them reported a remembrance about this conference. The principal Senate author and conferee Sen. James Metzen died in 2016 and thus is unavailable for comment.

[Subdivision 4 is amended to read in the Second Conference Report]

> 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.[26]

This merged version mostly used the tenant version of subdivision 4. It added the language about subdivision 5 from the successors' version (clause [3]) but crucially dropped the "or the successor in interest" phrase.

Both chambers passed the Second Conference Report, the governor signed it, and it became 1992 Minn. Laws c 376.[27] The security-deposit sections are at 1992 Minn. Laws ch. 376, art. 1, s.5-8.

> Summary of legislative history

In summary, as to section 504.20, the successors got the change to "60 days" in subdivision 5 and they got the changes they wanted in subdivision 7, but they lost the doubling-penalty hammer they wanted in subdivision 4.

The natural conclusion from this is that the legislature extended subdivision-7 bad faith penalties to successors[28] and extended those penalties from up to $200 per predecessor to up to $200 per deposit. The plain-language analysis in Part II.A is more than supported by legislative history. The successor in interest has standing to sue for bad faith penalties under Minn. Stat. §504.20, subd. 7 (1992) and thus under Minn. Stat. §504B.178, subd. 7 (2025).

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[26] Reprinted in 1992 Journal of the Minnesota Senate at 6632.

[27] 1992 Journal of the Minnesota Senate at 6648; 1992 Journal of the Minnesota House at 10,684-5; 1992 Journal of the Minnesota House at 12,109.

[28] Or maybe just clarified that right, but prior to 1992 that right was at best unclear.

III. THE COURT OF APPEALS' REASONING IN *TOWNRIDGE V. SILVER CREST* WAS MISPLACED

Why did the appellate court in Townridge Apts v Silver Crest Partnership, 1997 WL 769489, File No. C6-97-1002 (Minn. Ct. App. 12/16/1997) (nonprecedential) decide otherwise? Here is what the court wrote:

> 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).
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> 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.
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> Because Minn. Stat. § 504.20 was enacted to protect tenants and punitive damages must be directed to the persons the statute was intended to protect, we reverse the district court's award of punitive damages to respondent under Minn. Stat. § 504.20, subd. 7.

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

The Townridge court was wrong about the import of the phrase "in addition to the damages provided in subdivision 4." Most importantly, 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).[29] Under the Townridge court's reasoning a landlord who "accounts" for the deposit within three weeks and subtracts for obviously bogus reasons suffers no bad-faith penalty. That is an absurd reading of the statute. The phrase "in addition to the damages provided in subdivision 4" simply allows recovery for the bad-faith penalty whether or not the landlord is also punished for delay in accounting beyond three weeks.

Second, 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

[29] A less common type of bad faith is the landlord withholding the deposit for a reason not listed in the statute. *Kaeding v. Auleciems,* 886 N.W.2d 658 (Minn. App. 2016).

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 money to pay tenants instead of using the deposit money Silver Crest was unfairly withholding from Townridge.

Third, allowing both tenants and a successor to recover punitive damages from a predecessor who has violated the statute is perfectly reasonable. If the predecessor violates the statute, why shouldn't it be punished twice, once each by the person whose rights it violated? Moreover, subdivision 7 allows for a penalty "not to exceed $200 [now $500]" per deposit, not "$200 [now $500]" per deposit. A judge might well take into account multiple claimants and award either or both less than the full $200 (now $500).

Finally, as the legislative history makes clear, part of the statute was enacted to protect successors. The statute is not just a tenant-protecting statute.

In summary, the Townridge case was wrongly decided and therefore is not persuasive. As a nonprecedential decision it should not be followed. *Dynamic Air, Inc. v. Bloch,* 502 N.W.2d 796, 800-01 (Minn. App. 1993) ("Unpublished [now called nonprecedential] opinions of the Court of Appeals are not precedential.… At best, these opinions can be of persuasive value.").

IV. CONCLUSION

The plain language of Minn. Stat. §504B.178, subd. 5 gives successors in interest a claim against predecessors in interest when a predecessor retains deposits in violation of that subdivision. It follows that successors are proper claimants under Minn. Stat. §504B.178, subd. 7 because subdivision 7 allows claimants under subdivision 5 (as well as other parts of section 504B.178) to sue for bad-faith punitive damages.

The legislative history from the 77th legislative session confirms this conclusion. The 1992 amendments to subdivisions 5 and 7 promoted by successors were intended to achieve that goal and did achieve it.

Therefore, *Townridge Apts v Silver Crest Partnership*, File No. C6-97-1002 (Minn. Ct. App. 12/16/1997) (nonprecedential), holding that successors had no standing under subdivision 7, was wrongly decided.

ENDNOTE 1

COMMITTEE TESTIMONY BY TENANT ADVOCATES AND RELATED BILL SUMMARY BY SENATE-STAFF COUNSEL

As fully set out in Appendix LH 1992-376, the final bill, SF 720, that became law, was a very large housing bill that incorporated other large housing bills, including HF 714 and SF 915. The relevant committee testimony about the Article 1 security-deposit provisions promoted by the tenants was made during mark-up of HF 714 and SF 915. Below are transcripts of the testimonies, both brief. [30]

Senate Committee on Economic Development on March 25, 1991

Testimony by Senator Larry Pogemiller, chief author of SF 915, regarding the security-deposit sections.

Here is his entire presentation on the subject (there were no follow up questions or comments):

> Sections 4 and 5[31] work together and they say that a landlord would have to return a damage deposit if a building is condemned presuming that the condemnation is not a result of willful, malicious or irresponsible conduct by the tenant. Normally the landlord has three weeks after termination of tenancy to return the deposit. This says that in instances of condemnation you have to do it in five days.

Before Sen. Pogemiller spoke, the Senate counsel had distributed a summary of the bill to the committee.

Here the entire discussion of sections 4 and 5 in the summary:

> Sections 4 and 5: Shortens to five days the time in which the landlord must return a damage deposit if the building is condemned.

[30] Audio recordings for these two committee hearings are available at https://www.leg.state.mn.us/lrl/history/audio/

[31] Senator Pogemiller was referring to sections 4 and 5 of Article 1 of SF 915, language that eventually ended up in sections 5 and 6 of art. 1 of SF 720.

House Committee on Housing Development on March 25, 1991

Chief author, Rep. Karen Clark, introduced Paul Onka, a lobbyist from Legal Aid, and had him explain HF 714.

Here is Mr. Onka's entire testimony regarding the security-deposit sections:

> Sections 4 and 5[32] together shorten to five days the time in which a landlord must return a damage deposit if the building is condemned. Generally speaking, that's a situation where the tenant must move out on extremely short notice. What common situations [recording unclear] require the tenant vacate almost immediately if not within just a few days after the notice has been issued. This requires of course that the tenant move out right away and oftentimes post a different deposit on a different building. So we're shortening up here the time period within which that deposit must be returned if the building is condemned. I should add, it's not in the summary [apparently distributed to the committee but not in the Gale Library files] but in the bill, there is a limitation on this that the building is condemned for reasons not due to inappropriate actively or damage by the tenant.

[32] Similarly to the situation in the Senate, Mr. Onka was referring to sections 4 and 5 of Article 1 of HF 714, language that eventually ended up in sections 5 and 6 of art. 1 of SF 720.

ENDNOTE 2

COMMITTEE TESTIMONY BY SUCCESSOR ADVOCATES

As fully set out in Appendix LH 1992-376, the final bill that became law, , SF 720, was a very large housing bill that incorporated other large housing bills, including HF 714 and SF 915. The relevant committee testimony about the Article 4 security-deposit provisions promoted by the successors was made by John Herman during the mark-up of HF 714. Below is a transcript of the relevant part of that meeting.

Minnesota House Committee on Housing, Transcript of April 4, 1991 Meeting[33], Part Containing John Herman's Testimony

Rep. Karen Clark: { 2:15 }[34] We're going to continue with House File 714. There's one section that we skipped over because of the witness for, for the that section was not here and that was the old Section 4. And I believe people now should have a working draft or engrossment. It's titled WD-6 Working Draft 6 and I believe under that this Title 4. Mr. Chairman, I don't know. Do you have a, you don't have a current summary or index? Is there a beyond what I have? Was there something prepared for tonight? Do you have any folders anyway?

Rep. Andy Dawkins: Madam Chair, I haven't looked through my folder yet. Ms. Strobel, can you inform us as to what's that that's we do not.

Rep. Clark: The old Section 4. And then John Herman, part of the bill [sentence a bit garbled].

Rep. Dawkins: Mr. Herman, welcome to our committee. And introduce yourself for the record and then proceed to tell us about the old Article 4 if you would.

John Herman: Mr. Chairman, members of the committee, my name is John Herman, an attorney with the law firm of Leonard Street and Deinard in Minneapolis. On this section of the bill I represent the Minnesota Bankers Association. I'd also like to make some comments that reflect the views of Chuck Parsons, who's the head of the legislative committee of the Bar Association, who's also worked with me and with the the author and the Senate counsel that originally drafted this. On this section of the bill, he's not able to be here, but asked me if I would speak on the parts of the bill on his behalf. { 3:46 }I should say it's not a, it's not a authorized position of the Bar Association, but it does reflect his views as the chairman of the legislative committee as to changes that would be beneficial with respect to the law in this area, that would help to solve some of the problems we're seeing with respect to properties which are in foreclosure or being transferred because of defaults in the mortgage and security instrument. Section 1 of Article 4 deals with the problem of when a property is transferred from one owner to another owner and the first owner does not transfer the security deposits.

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[33] The audio recording is available at https://www.lrl.mn.gov/media/ .

[34] The brackets – { } – show time points on the audio recording to help readers follow along.

Rep. Dawkins: Mr. Herman, I'm going to interrupt just for a second to to refer everyone to the proper page number in your bill summary. We're still going with the bill summary originally passed out to committee members, if you want to follow the bill summary. But I think we should also get to the page and it's page 36 of what was done as a working draft on April 2, '91.{ 4:56 } If people have this WD-6 over the righthand corner and the page number, again, Ms. Strobel is page 36. And while committee members are finding that spot, I want to say that we have relied on Mr. Parsons in the past and he's had some expert judgments. And so I think that's good that you check this with him as well. If people with us now on page 36, it's called Article 5 in your working draft because we've had a new article, but it's called Article 4 on your bill summary.

John Herman: Before I talk about these sections, I can I can explain to the committee why there are a growing number of problems with foreclosures with respect to smaller commercial and apartment properties generally. I think everyone on this committee is aware that since 1986 buildings no longer offer deductibility of their depreciation against ordinary income. { 5:54 } As a result, many buildings were found to be overvalued, and as a result, many owners have determined that they either can't pay their mortgage or in fact, even take the next step and have abandoned the building. We've had circumstances that I'm familiar with where buildings in Minneapolis in the south part of the city will collapse to as many as four or five levels of contract per deed back to the point where you're to a sale that may have happened back into the early 70s before the building set a value that can support itself. And you often have buildings that were sold at prices that are not supportable by current rents. And so you have owners to stop taking good care of the buildings or even just disappear. In addition, you have a general phenomenon of decline in real estate values that's occurred because of excessive vacancies and so even some newer properties have experienced unexpected problems. { 6:54 } And it's created quite a difficult situation with respect to the maintenance and upkeep of properties and a very significant problem of properties being held by landlords who put no money into the building at all during the period of foreclosure and redemption, taking all the rents that they can, holding on to it and letting the property be wasted. Obviously, property taxes won't be paid and insurance premiums don't get paid, creating significant problems for lenders and making lenders reluctant to lend on properties if they don't have the normal protections of the ability to have a receiver come in and administer the property under court protection and to have an assignment of the rents. The changes in this section deal with these problems and try to facilitate the appointment of receivers and the use of the rent money for purposes of the maintenance of the building, the payment of taxes and the payment of insurance in appropriate cases.{ 7:58 } As I said these are all under court supervision. The first section deals with the problem of when a landlord has lost the property back to a lender or to a a contract for deed vendor but fails to give back to the new owner all of the security deposits of the tenants. The way this section works now only the individual tenant can sue, and frequently individual tenants don't have enough money at risk to warrant going after the landlord who's holding on to maybe as many as 20 or 30 or 40 security deposits, but and is not paying them to the new owner. What this section would do is it would allow a new owner who purchases a property, receives it back in foreclosure or gets it back in a contract cancellation to sue for all the security deposits in one bundle, { 8:58 }which would make it a worthwhile effort for a landlord to get the tenants money back as a way of being able to pass it on to the to the tenants in due

course when it is the proper time. It prevents a windfall to a person who is currently able to avoid paying the money back because there's no good remedy. What Section 2 does the current law says that there's an obligation to transfer these security deposits within a, quote, reasonable time, unquote. Mr. Parsons says that through his work, he's had numerous complaints come to his attention of landlords who claim that periods of many, many months still constitute a reasonable time. What this does is it defines reasonable time as 60 days after the termination of the interest of the person and the property or when the landlord is required to make the payment to an individual tenant. { 9:57 }

Rep. Marvin Dauner: Sir, there's nothing in statute that requires the deposit to be paid back within a certain length of time, the correct?

John Herman: The current statute says it has to be paid back within a quote, reasonable time, unquote and there are many cases that have been argued in the time since the statute passed as to what constitutes a reasonable time. Mr. Parsons says he's had many complaints come through the real estate section of landlords who have lost their building, claiming that months is a reasonable time, six to nine months, and they still haven't paid it back and they say, well, it's not an unreasonable time, therefore we shouldn't have to pay any penalty. He suggested a 60-day time period. I think that's ample time to constitute reasonable time to investigate if there's any reason why you shouldn't pay the money back. { 10:53 } What Section 3 does is it provides for a penalty of $200. It currently provides a penalty of up to $200 for a violation of the statute in terms of not paying the money over to the tenant or to the successor in interest. What this does is it provides that the $200 is for each deposit. So if he were to withhold a dozen deposits, it increases the amount of liability. It's a remedial change to try to encourage compliance with the statute, right?

Unidentified Speaker: The amount of the penalty.

Rep. Dawkins: Mr. I have a question this and I, I think you probably explained it. I just wasn't paying enough attention. Now it'll be the successor in interest in the property that has the right to sue to collect the the deposits that are actually owned by the tenant. So what benefit is there to the successor in interest to do this if the money's just going to get turned over to the tenant?

John Herman: Mr. Chairman, members of the Committee, if the if the landlord was the successor in interest doesn't do it, he's still liable for the security deposits.{ 11:54 }The tenants are always protected and can obtain them from the successor even if he has not received them from the predecessors. So there there's a strong interest in successors in seeking to have these deposits transferred, but right now it's not clear that the statute offers them a remedy.

Rep. Dawkins: Thank you.

John Herman: [rest of testimony is on non-security-deposit issues]