

NO. A08-1620

State of Minnesota
In Court of Appeals

Mackenzie Bailey Kutscheid,

Appellant,

vs.

Emerald Square Properties, Inc., JAS Apartments, Inc.,

Respondents.

APPELLANT'S REPLY BRIEF

Kenneth Hertz (#022926X)
HERTZ LAW OFFICES, P.A.
3853 Central Avenue N.E.
Columbia Heights, MN 55421
(612) 325-1161

Attorney for Respondents

Drew P. Schaffer (#0339362)
LEGAL AID SOCIETY OF MINNEAPOLIS
2929 Fourth Avenue South, Suite 201
Minneapolis, MN 55408
(612) 746-3644

Attorney for Appellant

TABLE OF CONTENTS

Pages

TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
ARGUMENT.....	2
I. RESPONDENTS' CONSTRUCTION OF MINN. STAT. § 504B.215, SUBD. 2A(1), IS INCONSISTENT WITH THE LANGUAGE AND THE PURPOSE OF THE STATUTE.....	2
A. The Legislative Intent Expressed In The Language Of The Statute Requires Complete Transparency At The Outset Of An Exceptional Transaction And The Disclosure Of 12 Specific Numbers To Prospective Tenants.....	2
B. An Estimated Range Of Future Apportioned Utility Bills Is Insufficient Notice Under The Statute	7
II. APPELLANT'S REQUESTED RELIEF IS THAT WHICH IS PROVIDED BY THE LAW	13
A. A Landlord Who Violates The Pre-Lease Notice Requirement Of MINN. STAT. § 504B.215, subd. 2a(1), May Not Legally Shift Responsibility For The Single-Metered Utility Bill To The Tenant	13
B. The Single-Metered Utility Billing Statute Provides For Relief In The Form Of Treble Damages.....	15
CONCLUSION	17

TABLE OF AUTHORITIES

Pages

STATE STATUTES

MINN. STAT. § 504B.161, subd. 1	14, 16
MINN. STAT. § 504B.178, subd. 4	16
MINN. STAT. § 504B.178, subd. 7	16
MINN. STAT. § 504B.215	1, 2, 13, 14, 15, 17
MINN. STAT. § 504B.215, subd 2	2, 13, 14, 15, 16
MINN. STAT. § 504B.215, subd 2a.....	2, 4, 6, 9, 13, 15
MINN. STAT. § 504B.215, subd. 2a(1).....	passim
MINN. STAT. § 504B.215, subd. 4	1, 3, 7, 9, 12, 14, 17
MINN. STAT. § 504B.221	13, 16
MINN. STAT. § 504B.221(a)	16
MINN. STAT. § 504B.231(a)	16
MINN. STAT. § 504B.271, subd 2	17
MINN. STAT. § 504B.385	16
MINN. STAT. § 504B.425	16
MINN. STAT. § 645.08.....	1, 9, 12, 15
MINN. STAT. § 645.08(1).....	4, 7
MINN. STAT. § 645.16.....	1, 7, 9, 12, 15
MINN. STAT. § 645.17.....	1, 9
MINN. STAT. § 645.17(1).....	4, 7
MINN. STAT. § 645.17(2).....	9, 12

INTRODUCTION

Appellant's Reply Brief will address the two primary arguments made in Respondents' Brief.

Respondents' first argument involves the statute's explicit mandate that a landlord disclose utility costs "for each month of the most recent calendar year." MINN. STAT. § 504B.215, subd. 2a(1). Respondents incorrectly conclude that the phrase "for each month" does not require a disclosure "for each month." Resp. Br. 6. Respondents incorrectly conclude that the phrase "the most recent calendar year" should be interpreted by the Court to mean that a person applying for an apartment in January 2009 would not be legally entitled to any disclosure whatsoever because utility costs for 2009 have not yet been incurred. Resp. Br. 7. Under MINN. STAT. §§ 645.08, 645.16, and 645.17, establishing the rules for the interpretation of statutes, the Court must reject Respondents' view of the law.

Respondents' second argument is that the explicit requirements of the statute comprise a "technicality." Resp. Br. 6. In Respondents' view, a landlord has "sufficiently complied" with the requirements of the law even if the landlord initiates no disclosure whatsoever and then, if a prospective tenant happens to ask a question about utility costs at the building, responds by providing non-specific, incomplete information. Resp. Br. 3-5. Under the established rules governing the interpretation of statutes and MINN. STAT. § 504B.215, subd. 4, providing that the protections in MINN. STAT. § 504B.215 "may not be waived or modified," the Court must reject Respondents' view of the law.

As this Reply Brief will establish, a violation of clear statutory mandates has occurred in this case. Because Respondents have ignored the letter and the purpose of MINN. STAT. § 504B.215, a consumer and tenant protection law, the penalty established in the statute should be imposed on Respondents.

ARGUMENT

I. RESPONDENTS' CONSTRUCTION OF MINN. STAT. § 504B.215, SUBD. 2A(1), IS INCONSISTENT WITH THE LANGUAGE AND THE PURPOSE OF THE STATUTE.

Respondents argue that an estimated range of future apportioned utility bill amounts is sufficient under MINN. STAT. § 504B.215, subd. 2a(1), to shift responsibility for single-metered utility billing from the landlord to the tenant. This construction of the statute does not fulfill the legislatively intended transparency and complete disclosure at the outset of an exceptional utility billing transaction. Moreover, this construction of the statute ignores the text of the statute, the purpose of the statute, and the minimal burden imposed on landlords by the pre-lease disclosure requirement. Most significantly, Respondents' construction modifies the statute, gutting the up-front protection for prospective tenants at the outset of an unusual cost-shifting transaction.

A. The Legislative Intent Expressed In The Language Of The Statute Requires Complete Transparency At The Outset Of An Exceptional Transaction And The Disclosure Of 12 Specific Numbers To Prospective Tenants.

A landlord at a single-metered residential building shall be the bill payer responsible. MINN. STAT. § 504B.215, subd. 2. Minnesota Statute § 504B.215, subd. 2a, establishes mandatory requirements for a landlord at a single-metered residential building

to shift billing responsibility for single-metered utilities to a tenant over and above the rent. Minnesota Statute § 504B.215, subd. 2a(1), states that, to shift billing responsibility for single-metered utilities over and above the rent, a landlord must first provide prospective tenants “notice” of “the total utility cost for the building for each month of the most recent calendar year.” The word *notice* means “warning or intimation of something: announcement,” “information,” or “intelligence.” *Merriam-Webster’s Online Dictionary*, at <http://www.merriam-webster.com/dictionary/notice> (Feb. 1, 2009). The information subject to the notice, or warning, required by MINN. STAT. § 504B.215, subd. 2a(1), is “the total utility cost for the building.” The time period subject to the notice required by the statute includes “each month of the most recent calendar year.” A prospective tenant’s right to the pre-lease notice required by the statute may not be waived or modified. MINN. STAT. § 504B.215, subd. 4.

Respondents argue that MINN. STAT. § 504B.215, subd. 2a(1), does not mean what it says. Respondents argue that the phrases “total utility cost for the building” and “for each month of the most recent calendar year,” used in conjunction in the statute, do not literally mean that Respondents are required to notify prospective tenants of “month-by-month billing data for a period of 12 previous consecutive months.” Resp. Br. 6. Respondents argue that, if the legislature intended that landlords shifting utility costs at single-metered buildings must warn prospective tenants of “month-by-month billing data for a period of 12 previous consecutive months,” the legislature would have inserted this “phraseology” into the statute. *Id.*

A reading of MINN. STAT. § 504B.215, subd. 2a(1), shows that the legislature did insert this precise requirement into the language of the statute. The words and phrases of a statute are construed according to rules of grammar and according to their common and approved usage. MINN. STAT. § 645.08(1). The legislature used words in the statute that mean exactly what Respondents now argue that the legislature did not intend. There is no other way to read MINN. STAT. § 504B.215, subd. 2a(1), than to require Respondents to inform Appellant, as a prospective tenant, of 12 specific numbers representing building-wide utility costs for the 12 months of the most recent calendar year.

Respondents argue by way of example that, under the statute, a prospective tenant in January of a given year is entitled to no notice of total utility costs for any previous month. Resp. Br. 7. Respondents' conclusion is incorrect under the language of MINN. STAT. § 504B.215, subd. 2a(1). Under the statute, a prospective tenant looking at an apartment in January 2009 is entitled to notice of the total utility costs for each month from January 2008 through December 2008. There is literally no other way to construe the meaning of the words in the statute. *See* MINN. STAT. § 645.08(1). Moreover, the Court presumes that the legislature does not intend absurd results. MINN. STAT. § 645.17(1). Respondents' argued construction of the statute leads to an absurd result that is not even remotely implied by the statutory language.

Minnesota Statute § 504B.215, subd. 2a, establishes two primary components of intended consumer and tenant protection: (1) notice to prospective tenants, and (2) regulation of the exceptional practice of shifting single-metered utility costs to

tenants over and above their rent. Respondents' construction of the statute eliminates not only half of the statute's intended protection, but the most important half. Without the up-front protection intended by the statute, a prospective tenant who ends up trapped with an unaffordable utility obligation can face eviction, rendering the apportionment methodology and billing practices academic.

The up-front protection for prospective tenants embodied by language of MINN. STAT. § 504B.215, subd. 2a(1), is a plain statement of good policy. Landlords usually internalize building-wide utility costs and adjust tenants' rents accordingly. Shifting responsibility to the tenants for payment of the costs, over and above the rent, is an exceptional practice. Requiring landlords who want to shift utility costs over and above the rent to share information about past costs with a prospective tenant, before the tenancy begins, promotes fairness under the circumstances surrounding the transaction. Landlords like Respondents have complete information about utility costs at their buildings. Prospective tenants have no information or means to obtain information about the utility costs at a prospective home. Requiring the sharing of this information equalizes the useful knowledge of the prospective parties to an unusual transaction. A prospective tenant, like Appellant in November 2007, can only have a complete picture of the obligation being shifted with knowledge of the information mandated by the statute.

Not only is the pre-lease notice requirement important, but the burden of meeting the requirement is minimal. The information a landlord is required to

produce and to disclose is a group of 12 numbers that can be easily gathered and prepared to share with prospective tenants. A landlord can comply with the pre-lease notice requirement in the statute by simply making a list of the total single-metered utility costs for each month from January through December at the end of a year, and then using the 12-number list to disclose the information to prospective tenants throughout the course of the next year. A landlord could make one updated list of this nature at the end of every year and be ever-ready to comply with the language and the purpose of the statute.

The record of this case shows that, even without an ever-ready list to make the required disclosures, Respondents had no problem producing and sharing the statutorily required information with Appellant five months after she signed a lease. The only potential downside to Respondents in sharing the same information five months earlier is that Appellant may have decided not to rent an apartment at Respondents' building. This potentially negative consequence for Respondents would only have occurred as the result of informed decision-making on the part of Appellant, which is precisely what is intended by the statute.

The purpose of the MINN. STAT. § 504B.215, subd. 2a, expressed in the language, is complete transparency and disclosure to encourage equal information at the outset and throughout an exceptional cost-shifting transaction. Respondents' argument that the statute does not require the up-front disclosure of 12 numbers to a prospective tenant is inconsistent with both the language and the purpose of the

statute. *See* MINN. STAT. §§ 645.08(1), 645.16. Moreover, Respondents' argued construction of the statute leads to absurd results. *See* MINN. STAT. § 645.17(1). Finally, Respondents' argued construction of the statute modifies a prospective tenant's right to pre-lease notice of past month-by-month costs. *See* MINN. STAT. § 504B.215, subd. 4. Accordingly, the Court should reject Respondents' construction of the statute.

B. An Estimated Range Of Future Apportioned Utility Bills Is Insufficient Notice Under The Statute.

It is undisputed that Respondents did not provide Appellant with notice of 12 numbers representing building-wide utility costs for each month of the year preceding November 2007. Respondents argue that an estimate given to Appellant as a prospective tenant constitutes sufficient notice of past month-by-month costs because the estimate was consistent with past actual utility billing data for Respondents' apartment building. Resp. Br. 6.

Respondents' argument that an estimate of future monthly bill amounts provides notice of past building-wide costs assumes a completeness of understanding for which there is no evidence in this case. When Appellant was a prospective tenant in November 2007, Respondents' agent told Appellant that her utility costs would be \$60 to \$80 per month. The estimate was consistent with past actual billing data for the building only if viewed and understood in context with the specific data in question. Appellant did not have this context when she received the estimate. By all accounts, the context in which Appellant received the estimate was as a brief, verbal response to a question about her

future utility expenses at Respondents' building. In that context, the agent's \$60-to-\$80 estimate could be understood in several ways, including Appellant's understanding that her monthly costs would be fairly level and that she would not pay more than the estimated range in any given future month.

As Respondents' billing records show, the leasing agent could have notified Appellant that her bills would vary quite drastically from month to month over the course of a year, depending on the month and season. The agent could have notified Appellant of the specific monthly amount, in the form of an exact number of dollars and cents, a tenant in Appellant's unit would have paid in each month of the past year, using the information in Respondents' possession. Respondents' agent could have notified Appellant more generally that her monthly bills would be as much as approximately \$170 during winter months, if past building-wide utility costs were any indication of the costs to be shifted to Appellant during Appellant's prospective tenancy.

Respondents' agent gave Appellant none of this information in November 2007. All of the information in Respondents' possession would have informed Appellant's decision-making as a prospective tenant. Most significantly, the information would have warned Appellant about the high winter-month utility bills she eventually received from Respondents. Instead, Respondents chose to provide Appellant neither the actual information explicitly required by MINN. STAT. § 504B.215, subd. 2a(1), nor a summary of the information that was useful to give Appellant the notice intended by the statute.

If the legislature had intended that an estimate could serve as pre-lease notice of past building-wide costs, then the legislature could have simply included the

concept in MINN. STAT. § 504B.215, subd. 2a(1). The legislature did employ the concept of a “good faith estimate” elsewhere in MINN. STAT. § 504B.215, subd. 2a, in providing an option for an annualized budget plan to deal with the problem of fluctuating utility costs by equalizing the monthly payment obligations shifted to the tenant. The legislature excluded the same concept from the pre-lease notice provision in the statute, instead requiring the disclosure of specified information.

The legislature went beyond predictive generality and required notice of past utility costs that was actual, complete, numerical, and specific. The Court presumes that the legislature intended the pre-lease notice requirement to be effective and certain. MINN. STAT. § 645.17(2). The effective and certain notice intended by the legislature may not be “modified” by Respondents. MINN. STAT. § 504B.215, subd. 4. Allowing an estimated range of future apportioned bills to suffice under MINN. STAT. § 504B.215, subd. 2a(1), is inconsistent with the certainty and specificity expressed in the language of the statute. *See* MINN. STAT. §§ 645.08, 645.16, and 645.17. Moreover, allowing Respondents’ practice increases the potential for misunderstanding on the part of prospective tenants, the intended recipients of notice, knowledge, and information at the outset of an exceptional transaction.

Respondents argue that the sufficiency of notice in the pre-lease communications between Appellant and Respondents’ leasing agent rested on a credibility determination by the district court. Resp. Br. 4. This view of the record of the case is simply wrong.

The district court’s determination that the pre-lease estimate was sufficient notice under MINN. STAT. § 504B.215, subd. 2a(1), followed from the court’s incorrect legal

determination that the law is silent on when month-by-month information about past costs must be disclosed. App. 37, ¶ 17. No matter how the testimony of Appellant and Respondents' leasing agent is interpreted, the agent's estimate was insufficient under the statute. The estimate gave Appellant no warning or information about total utility costs for the building for past months. The estimate gave Appellant no warning or information about building-wide utility costs for any single month from the pre-November 2007 period. No matter how liberally Respondents' agent's pre-lease statement to Appellant is construed, the statement provided notice about none of the information explicitly required by MINN. STAT. § 504B.215, subd. 2a(1), for any month in a previous calendar year.

Moreover, when Appellant was a prospective tenant in November 2007, it was not her duty to understand an ambiguous and incomplete response to her question about utility billing at Respondents' building. It was not Appellant's duty in the first place to ask a question to seek information about utility costs at Respondents' building. It was not Appellant's duty to ask more than one question to clarify any misunderstanding she may have had about the shifting of billing responsibility for single-metered utilities at Respondents' building. It was not Appellant's affirmative duty to seek information from Respondents.

On the contrary, MINN. STAT. § 504B.215, subd. 2a(1), makes it Respondents' affirmative duty to give notice of specific building-wide utility billing information to prospective tenants so that they become informed decision-makers when deciding whether to sign a lease. The law imposes this affirmative duty on a landlord at a single-

metered residential building to prevent disputes after responsibility for single-metered utility bills is shifted. The law imposes this affirmative duty to encourage completeness of understanding about the method and expense of the shifted utility billing when a prospective tenant agrees to assume responsibility to pay for single-metered utilities. The law imposes this affirmative duty so that a prospective tenant is fully informed and warned about monthly and seasonally variable utility costs at an apartment building before assuming the obligation. The law imposes this affirmative duty so that an unwarned prospective tenant does not end up trapped with a fluctuating utility obligation that may be unaffordable to the individual during some months of the year.

When Appellant met with Respondents' leasing agent as a prospective tenant in November 2007, Respondents apparently did not have a specific plan to meet their affirmative duty to put Appellant on notice of the past year's monthly building-wide utility costs. The testimonial record of this case shows that Respondents' only pre-lease utility billing disclosure plan involved instructing their leasing agent to give a particular response to utility billing questions asked by Appellant or any other prospective tenant at Respondents' building. The only reason Appellant received *any* pre-lease disclosure at all is because of her own question, which prompted the trained response from Respondents' leasing agent.

Respondents' lack of a pre-lease disclosure plan resulted in notice to Appellant that was grossly incomplete under the explicit notice requirement in MINN. STAT. § 504B.215, subd. 2a(1). Regardless of how the testimony of Respondents' leasing agent

and Appellant about their pre-lease communications is construed, Respondents simply did not fulfill their legal duty under the statute.

Respondents argue now that the Court should ignore the words used in MINN. STAT. § 504B.215, subd. 2a(1), and modify the statute's requirements to reach what Respondents deem to be an equitable result, given that Appellant received some minimal disclosure from Respondents as a result of her own question. Respondents argue that the minimal disclosure that occurred in this case, while not in technical, literal compliance with the actual words of the statute, is enough to meet the statute's purpose.

However, when the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit. MINN. STAT. § 645.16. There is no ambiguity in MINN. STAT. § 504B.215, subd. 2a(1). Respondents' claimed "technicality" is the part of the law they would prefer to ignore. Respondents' view of the law is inconsistent with the language and the broad purpose of the statute. *See* MINN. STAT. §§ 645.08, 645.16. Respondents' view of the law renders the pre-lease notice requirement in the statute ineffective and uncertain. *See* MINN. STAT. §§ 645.17(2). Respondents' view of the law modifies the statute and removes a specific, intended protection for prospective tenants at the initial phase of an exceptional cost-shifting transaction. *See* MINN. STAT. § 504B.215, subd. 4. Accordingly, the Court should reject Respondents' view of the law.

II. APPELLANT'S REQUESTED RELIEF IS THAT WHICH IS PROVIDED BY THE LAW.

Respondents argue that Appellant is not entitled to relief that would shift responsibility for the bills back to Respondents for their violation of MINN. STAT. § 504B.215, subd. 2a. Resp. Br. 8-9. Respondents argue further that Appellant is not entitled to relief under MINN. STAT. §§ 504B.215, subd. 2, 504B.221. Resp. Br. 7. Respondents argue that there is no violation of MINN. STAT. § 504B.215, subd. 2, when a landlord shifts single-metered utility billing responsibility to a tenant without following the mandatory statutory procedure to do so. Resp. Br. 8. Respondents' arguments ignore that Appellant's requested relief is merely that which is provided by the applicable statutes.

A. A Landlord Who Violates The Pre-Lease Notice Requirement Of MINN. STAT. § 504B.215, subd. 2a(1), May Not Legally Shift Responsibility For The Single-Metered Utility Bill To The Tenant.

Respondents argue that, even if Appellant did not have the notice required by the statute, she had an expectation of paying some portion of the bills under the agreements she signed with Respondents. Resp. Br. 8-9. Respondents argue that it would be inequitable to excuse Appellant from responsibility for a portion of the single-metered utility bills at Respondents' building. *Id.* Respondents' arguments disregard the language and purpose of MINN. STAT. § 504B.215.

Minnesota Statute § 504B.215 is a consumer and tenant protection statute. Minnesota Statute § 504B.215, subd. 2, requires Respondents to be responsible for paying single-metered utilities. Minnesota Statute § 504B.215, subd. 2a, establishes the

only procedure by which responsibility for single-metered utility bills can be shifted over and above the rent to a tenant at a single-metered residential building. The tenant protections and rights provided by MINN. STAT. § 504B.215 are mandatory and may not be waived or modified. MINN. STAT. § 504B.215, subs. 2, 4; *see also* MINN. STAT. § 504B.161, subd. 1 (cross-referenced in MINN. STAT. § 504B.215, subd. 2).

The language of the statute excuses a tenant from an illegally shifted utility obligation in providing that the protections in the statute may not be waived or modified, by contract or otherwise. *See* MINN. STAT. § 504B.215, subs. 2, 4. It is difficult to imagine a more appropriate, equitable, or relevant remedy than to excuse a tenant from responsibility for paying single-metered utility costs if a landlord did not follow the cost-shifting procedure outlined in the statute. The practical way to remedy a landlord's violation of the statute is to shift responsibility for the utilities back to the landlord, the statutorily responsible bill payer who illegally shifted the obligation to the tenant.

In this case, Appellant signed a lease and utilities addendum requiring her to pay for single-metered utilities over and above her rent after Respondents concealed important information they were required to disclose beforehand and which they could have disclosed with minimal effort. The lease and utilities addendum waive and modify the protections outlined in MINN. STAT. § 504B.215 by making Appellant responsible to pay for single-metered utilities without prior notice of single-metered utility costs for each month of the most recent calendar year. *See* MINN. STAT. § 504B.215, subd. 4. Because Respondents violated MINN. STAT. § 504B.215, subd. 2a(1), under the framework established by MINN. STAT. § 504B.215, the portions of the contracts that

shift responsibility to Appellant for the payment of single-metered utilities have no force and effect as a matter of law.

At its core, MINN. STAT. § 504B.215 simply makes a landlord at a single-metered residential building the legally answerable and responsible bill payer unless the landlord follows the rules to shift the obligation legally. A tenant in Appellant's position must have the remedy Appellant seeks, or the words in the statute would not have their literally intended application and meaning. *See* MINN. STAT. §§ 645.08, 645.16. Moreover, it is fair to shift payment responsibility for single-metered utilities back to a landlord who violates the statute. The legislature intended to prevent a tenant from being trapped by a contractual term shifting payment responsibility for single-metered utilities unless the tenant received the required pre-lease notice from the landlord. Appellant requests only an application of MINN. STAT. § 504B.215. Because the statute provides Appellant the relief she requests, the Court should reject Respondents' view of the law.

B. The Single-Metered Utility Billing Statute Provides For Relief In The Form Of Treble Damages.

Respondents argue that they have not violated MINN. STAT. § 504B.215, subd. 2, and that Appellant is not entitled to damages for a violation of the statute. Resp. Br. 8-9. Respondents state in their brief that "Appellant has not provided any authority for, [sic] her suggestion that violating Minn. Stat. §504B.215 Subd. 2a [sic] creates a violation of Minn. Stat. §504B.215 Subd. 2[sic]." Resp. Br. 8.

The authority for Appellant's assertion is the statute itself. If Respondents did not follow the procedure established by MINN. STAT. § 504B.215, subd. 2a, then shifting

payment responsibility for single-metered utility bills to Appellant is barred by the law. This is the self-evident meaning of the mandatory, non-waivable requirement that landlords at single-metered residential buildings shall be responsible for paying the utility bills. *See* MINN. STAT. § 504B.215, subd. 2.

Respondents did not follow the mandatory procedure to shift responsibility for the single-metered utility costs to Appellant. Thus, Respondents have shifted billing responsibility for single-metered utilities to Appellant in violation of MINN. STAT. § 504B.215, subd. 2, and are subject to the relief provided by the statute, including relief under MINN. STAT. § 504B.221.

Chapter 504B includes several provisions intended to remedy landlord wrongdoing by providing statutory relief for tenants. A landlord who violates the mandatory, non-waivable covenants of habitability in MINN. STAT. § 504B.161, subd. 1, is subject to an affirmative claim for rent abatement. MINN. STAT. §§ 504B.385, 504B.425. A landlord who shuts off a tenant's utility service is liable to the tenant for \$500 or treble damages, whichever is greater, and reasonable attorney's fees. MINN. STAT. § 504B.221(a). A landlord who locks a tenant out of a property without following the legal eviction process is liable to the tenant for \$500 or treble damages, whichever is greater, and reasonable attorney's fees. MINN. STAT. § 504B.231(a). A landlord who wrongfully withholds a tenant's security deposit is doubly liable for the wrongfully withheld amount, plus a bad-faith retention penalty of \$200. MINN. STAT. § 504B.178, subs. 4, 7. A landlord who refuses to return personal property left behind at premises abandoned by a tenant within specific statutory time periods after the tenant demands the

return of the property is liable for actual damages, reasonable attorney's fees, and up to \$300 in punitive damages. MINN. STAT. § 504B.271, subd. 2.

The legislature deemed the wrong it sought to prevent in enacting MINN. STAT. § 504B.215 to be in the class of wrongs – along with utility terminations and wrongful lockouts – subject to a statutory award of \$500 or treble damages, whichever is greater, and attorney's fees. In this case, the district court determined that the statutory treble damages remedy was available to Appellant, but did not award the remedy in this case because the district court did not find a violation of MINN. STAT. § 504B.215. App. 39 at Conclusions of Law, ¶ 2. Appellant merely seeks the relief provided by the law for Respondents' violation of MINN. STAT. § 504B.215, consistent with the language and the purpose of the statute. Because the statute provides Appellant the relief she requests, the Court should reject Respondents' view of the law.

CONCLUSION

The legislature not only created very specific tenants' rights in MINN. STAT. § 504B.215, but also provided that the specific rights created by the statute could not be "modified" by a landlord. MINN. STAT. § 504B.215, subd. 4. Respondents in the present case are in fact seeking a substantial modification of the explicit requirements of the law. Their arguments in these matters are more appropriately addressed to the legislature. The Court should require the Respondents in this case to obey the law as written.

Respondents' construction of MINN. STAT. § 504B.215, subd. 2a(1), contradicts the language and the intended purpose of the statute, which provides for

transparency and complete disclosure at the outset of an exceptional utility billing transaction. Respondents' construction of the statute ignores the minimal burden imposed on landlords at single-metered buildings by the pre-lease notice requirement, given the landlord's access to information a prospective tenant could not otherwise obtain. Most significantly, Respondents seek to modify the statute's specifically intended up-front protection for prospective tenants, rendering the pre-lease notice provision ineffective and uncertain. Accordingly, the Court should reject Respondents' argued construction of the statute.

Respectfully submitted,

LAW OFFICES OF THE LEGAL AID
SOCIETY OF MINNEAPOLIS

Dated: February 9, 2009

BY 

Drew P. Schaffer, ID No. 0339362
2929 Fourth Avenue South, Suite 201
Minneapolis, MN 55408
Telephone: (612) 746-3644
Facsimile: (612) 827-7890
E-mail: dpschaffer@midmnlegal.org

ATTORNEY FOR APPELLANT

CERTIFICATE OF COMPLIANCE

WITH MINN. R. APP. P. 132.01, Subd. 3

The undersigned certifies that the Brief submitted herein contains 4,886 words and complies with the type/volume limitations of the Minnesota Rules of Appellate Procedure 132. This Brief was prepared using a proportional spaced font size of 13 pt. The word count is stated in reliance on Microsoft Word 2003, the word processing system used to prepare this Brief.

LAW OFFICES OF THE LEGAL AID
SOCIETY OF MINNEAPOLIS

Dated: February 9, 2009

BY



Drew P. Schaffer, ID No. 0339362
2929 Fourth Avenue South, Suite 201
Minneapolis, MN 55408
Telephone: (612) 746-3644
Facsimile: (612) 827-7890
E-mail: dpschaffer@midmnlegal.org