

Landlord Tenant Law and Eviction Defense



OVERVIEW OF LANDLORD TENANT LAW AND PRACTICE TIPS FOR HOUSING COURT
REPRESENTATION



STATUES, REGULATIONS, PROCEDURE

- ❖ Minn. Stat. 504B- **Private Landlord Tenant**
- ❖ Minn. Stat. Chs. 327C- **Manufactured Home Parks**
- ❖ Various Federal Regulations (24 C.F.R. Parts 966, 965, 5, 8, 100), HUD Handbook (HUD Handbook 4350.3) and US Code (42 U.S.C. §1437d)- **Public Housing, Section 8, and Project Based Section 8**
- ❖ Procedure governed by Minn. R. Civ. P. and Minn. Gen. R. Prac. 600 et. seq

Tenancy Basics

- ❖ **Tenant**- a person who is occupying a dwelling in a residential building under a lease or contract, whether oral or written, that requires the payment of money or exchange of services, all other regular occupants of that dwelling unit, or a resident of a manufactured home park.- Minn. Stat. § 504B.001, subd. 12.
- ❖ **Landlord**- an owner of real property, a contract for deed vendee, receiver, executor, trustee, lessee, agent, or other person directly or indirectly in control of rental property. Minn. Stat. § 504B.001, subd. 7.
- ❖ **Lease**- an oral or written agreement creating a tenancy in real property.
- ❖ **Tenancy at will**- a tenancy in which the tenant holds possession by permission of the landlord but without a fixed ending date.



Landlord Tenant Relationship

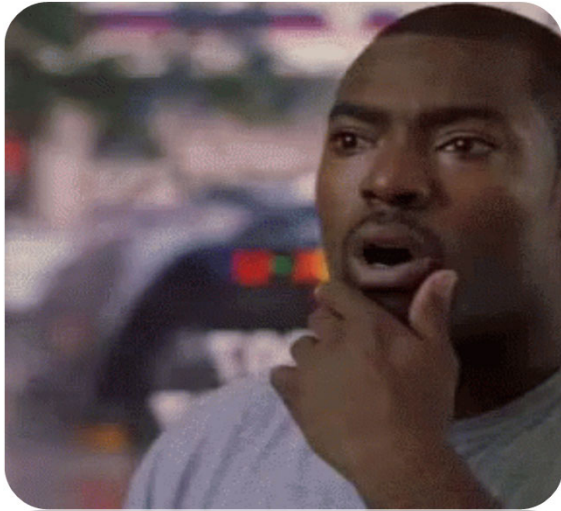
Contractual relationship determined by the lease and the law

Honeymoon

Breakup

Moving On

The Lease



The lease dictates the landlord-tenant relationship. Always read the lease.

- ❖ Landlords and tenants have a large amount of freedom to decide the terms and conditions of the lease.
- ❖ Leases can be written or oral. However, a landlord of a residential building with 12 or more residential units must have a written lease for each unit rented to a residential tenant. Minn. Stat. § 504B.111
- ❖ Minnesota has no general rules on rent control for private residential property. Landlords can generally charge what they want for rent and security deposits.- See Minn. Stat. § 471.9996.
- ❖ Late fees are capped at eight percent of the unpaid rent and landlord and tenant must agree in writing that late fee can be charged.- Minn. Stat. § 504B.177

Length of Tenancy

- ❖ Definite term or periodic
 - ▶ In a periodic tenancy rental period runs from one rent payment to the next. Usually month-to-month.
- ❖ Lease term is periodic if the lease is silent as to the length of the lease term. Definite term lease becomes periodic if tenant remains in unit after the definite term lease ends and the lease is not renewed
 - ▶ The length of notice to end the lease and the form it must take may be stated in the lease. If the lease does not state a notice requirement, then written notice must be given one full rental period plus one day before the tenancy ends. Minn. Stat. § 504B.135
- ❖ Parties are free to contract length of tenancy except in situations where landlord has received notice of a contract for deed cancellation or notice of a mortgage foreclosure sale. Minn. Stat. § 504B.151
 - ▶ Landlord must inform tenant of notice of contract for deed cancellation or notice of mortgage foreclosure sale prior to entering into lease agreement or accepting any rent or a security deposit. Minn. Stat. § 504B.151
- ❖ Ambiguities in lease are construed against the drafter
 - ▶ Landlord can't agree to a fixed term lease that extends beyond the cancellation or redemption period. Minn. Stat. § 504B.151

Statutory Restrictions on Lease Terms

- ❖ Automatic renewal of leases- Minn. Stat. § 504B.145
- ❖ Time period for notice to quit- Minn. Stat. § 504B.147
- ❖ Covenants of habitability- Minn. Stat § 504B.161
- ❖ Tenant covenant not to engage in allow drug possession, drug activity, prostitution, illegal firearm use or possession, or allow stolen property on the leased premises- Minn. Stat § 504B.171
- ❖ Return of and use of security deposits- Minn. Stat § 504B.178
- ❖ Rental of condemned premises- Minn. Stat § 504B.204
- ❖ Prohibiting penalty on tenant for calling for police or emergency assistance- Minn. Stat § 504B.205
- ❖ Right of victim of violence to terminate lease- Minn. Stat § 504B.206



CONT'D

- ▶ Notice of landlord entry onto premises- Minn. Stat § 504B.211
- ▶ Landlord's nonpayment of utility or essential services; shared meters rules- Minn. Stat § 504B.215
- ▶ Unlawful termination of utilities- Minn. Stat § 504B.221; Minn. Stat § 504B.225
- ▶ Unlawful eviction- Minn. Stat § 504B.231
- ▶ Abandoned property- Minn. Stat. § 504B.271
- ▶ Restriction on eviction due to familial status- Minn. Stat. § 504B.315
- ▶ Execution of writ of recovery- Minn. Stat. § 504B.365

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Common Issues

IT DOES NOT MATTER WHAT THE LEASE SAYS

”

Common issues clients will seek advice about where the law supersedes any contrary lease provisions.



Landlord Entering Without Notice

Landlord Cannot Freely Enter the Unit

Notice and Reasonable Business Purpose

- ▶ a landlord may enter the premises rented by a residential tenant only for a reasonable business purpose and after making a good faith effort to give the residential tenant reasonable notice under the circumstances of the intent to enter.- Minn. Stat. § 504B.211, subd. 2.
- ▶ Exceptions:
- ▶ (1) immediate entry is necessary to prevent injury to persons or property because of conditions relating to maintenance, building security, or law enforcement;
- ▶ (2) immediate entry is necessary to determine a residential tenant's safety; or
- ▶ (3) immediate entry is necessary in order to comply with local ordinances regarding unlawful activity occurring within the residential tenant's premises.

CONDEMNATION



- ❖ The city inspector condemned my apartment what do I do?
- ❖ Landlord can't accept rent or security deposit for a unit that has been declared unfit for human habitation
- ❖ Landlord is liable to the tenant for actual damages and an amount equal to three times the amount of all money collected from the tenant after date of condemnation- 504B.204
- ❖ Tenant has the right to vacate the premises prior to the end of the lease term.- Minn. Stat. § 504B.131
- ❖ If the tenancy ends because the building is condemned, the landlord must return the security deposit within five days after the tenant leaves

Landlord shuts off or does not pay utilities

- ▶ Tenant has right to “pay and deduct” from rent utilities that landlord is responsible for to correct or avoid shut off. Must give landlord notice that is reasonable under the circumstances before paying.- Minn. Stat. § 504B.215
- ▶ Tenant may recover treble damages or \$500 whichever is greater if landlord interrupts or causes the interruption of electricity, heat, gas, or water services.- Minn. Stat. § 504B.221

Personal Property Left Behind

- ▶ What happens to my stuff?
- ❖ Minn. Stat. § 504B.365 – regulation of execution of writ of recovery
- ❖ Minn. Stat. § 504B.271 – regulation of retention and sale of personal property left behind by the tenant in any tenancy, including property stored at the premises following execution of writ of recovery
- ❖ During the execution of a writ of recovery, the law requires an officer-supervised inventory of personal property stored on the premises. Minn. Stat. § 504B.365, subd. 3(d).
- ❖ **Property stored on the premises-** landlord must store and care for property for 28 days after abandonment. Must return to tenant 24 hours after written demand from the tenant.
- ❖ **Property stored off the premises-** landlord must store property for 60 days. Must return to tenant 48 hours after written demand. Tenant must pay storage costs for property. Landlord has a lien on property for costs and may hold property until paid.
- ❖ Landlord is responsible for proper removal, storage and care of the tenant's property and may be liable for damages to or loss of property. Minn. Stat. § 504B.365, subd. 3(f).

OVERVIEW OF TENANT RIGHTS/RESPONSIBILITIES

► Tenant Can

- ❖ Enforce right to repairs
- ❖ Not be removed from property without court action
- ❖ Get a receipt when paying rent in cash
- ❖ Call the police for an emergency
- ❖ Terminate the lease if a victim of violence
- ❖ Get a copy of the lease
- ❖ Not be required to perform repairs or maintenance unless the agreement is set forth in conspicuous writing and supported by adequate consideration
- ❖ Recover attorney fees in an action with landlord if lease allows landlord attorney fees

► Tenant Can't

- ❖ Engage in willful and malicious destruction of leased residential rental property
- ❖ Engage in drug activity, prostitution, possess firearms illegally, or possess stolen property on the leased premises.
- ❖ Withhold payment of all or any portion of rent for the last payment period of a residential rental agreement on the grounds that the security deposit should serve as payment for the rent (some exceptions)
- ❖ Occupy the leased property after the expiration of the lease or in violation of a lawful notice to vacate.
- ❖ Abandon apartment in the winter (November 15-April 15) without giving 3 days notice to landlord

Landlord Responsibilities

▶ Landlord Must

▶ Covenants of Habitability:

- ❖ **(1). Make necessary repairs**
- ❖ **(2). Keep the premises and common areas fit for the use intended by the parties**
- ❖ **(3). Make the premises reasonably energy efficient**
- ❖ **(4). Keep premises in compliance with applicable health and safety laws**
- ❖ Return security deposit or provide reason for withholding deposit to the tenant within 3 weeks after termination of tenancy
- ❖ Disclose to the tenant the name and address of the person authorized to manage the premises and the address of the landlord or an agent authorized by the landlord to accept service of process.
- ❖ Be the bill payer responsible for utilities services in a single-metered building
- ❖ Notify tenant in writing about foreclosure or contract for deed cancellation before entering into lease or accepting rent.

▶ Landlord Must not

- ❖ Accept rent when the unit is condemned
- ❖ Enter the unit without reasonable notice
- ❖ Enter a lease that extends beyond the mortgage redemption period in a foreclosure
- ❖ Intentionally shut off utilities to the unit
- ❖ Change the locks or remove a tenant's property from the unit without obtaining and executing a writ of recovery
- ❖ Evict tenant because of being a victim of domestic violence
- ❖ Evict tenant based on familial status

EVICITION

Minn. Stat. § 504B.285-504B.371



- ▶ Eviction is a summary proceeding to decide the right of possession of the property.
- ▶ Grounds for eviction:
 - ❖ Non-payment of rent
 - ❖ Breach of lease
 - ❖ Violation of Minn. Stat. § 504B.171
 - ❖ Holdover

SERVICE

- ❖ **Summons and Complaint-** eviction actions are commenced by filing a complaint. The court then issues a summons directing the tenant to appear in court- Minn. Stat. § 504B.321 Subd. 1.
- ❖ **Service-** summons and complaint must be served at least seven days before court appearance. Court appearance is seven to fourteen days from the issuance of the summons- Minn. Stat. § 504B.331
- ❖ **1.** Service must be done personally at tenant's address on a person of suitable age and discretion residing at the address by someone who is not a party to the action.
- ❖ **2.** Service may be done by conspicuously posting the summons and complaint on the property for at least a week when:
 - ❖ Personal service is unsuccessful and service has been attempted at least twice on different days, with at least one of the attempts between 6:00 p.m. and 10:00 p.m.
 - ❖ The plaintiff must file an "affidavit of not found" with the court indicating:
 - ❖ the defendant cannot be found, or that the landlord or the landlord's attorney believes that the defendant is not in the state; and
 - ❖ a copy of the summons has been mailed to the defendant at the defendant's last known address if any is known to the plaintiff.
 - ❖ Plaintiff must then file an affidavit of service by mail and affidavit of service by posting



EVICTON HEARING

- ❖ **First appearance-** the tenant may answer the complaint at the first appearance. The case will either settle or be set for a trial in six days from the first appearance. Either party may request trial by jury.- Minn. Stat. § 504B.335
- ❖ **Trial scheduling-** trial must occur within six days of first appearance unless the parties agree otherwise or the court has no availability on its trial calendar. Minn. Stat. § 504B.341
- ❖ The proceedings are the same as other civil proceedings- ie. rules of evidence, preponderance of the evidence standard etc. except for the application of rules specific to housing court under Minn. Gen. R. Prac. 600-612.



POST-TRIAL

- ❖ **Tenant wins-** court issues judgment for tenant and may expunge the eviction at the time judgment is ordered. Minn. Stat. § 504B.345, subd. 1
- ❖ **Landlord wins-** judgment issued and landlord is granted an immediate writ of recovery for the premises and order tenant to vacate. Minn. Stat. § 504B.345, subd. 1
- ❖ **Writ of recovery-** Once writ is granted landlord pays costs to obtain and execute the writ. The writ is executed by local law enforcement who will demand the tenant vacate premises within 24 hours. If the tenant doesn't move then the landlord schedules a move out with law enforcement. Landlord must notify tenant in writing by mail of date and approximate time of move out. Minn. Stat. § 504B.365
- ❖ **Stay of writ-** Court must stay execution of the writ up to seven days if an immediate move out would cause substantial hardship to the tenant or the tenant's family. Minn. Stat. § 504B.345, subd.1 (d)

APPEAL AND JUDGE REVIEW

504B.371 and Minn. Gen. R. Prac. Rule 611

- ❖ **Time period to file appeal-** 15 days from judgment
- ❖ **Stay of writ of recovery pending appeal-** Court must stay the writ of recovery for at least 24 hours after receiving notice that tenant intends to appeal
- ▶ **Can the tenant stay in the premises while the appeal is pending?-** Tenant may stay in the unit if the tenant pays a supersedeas bond. The bond should be structured so that landlord is paid is paid rent during the pendency of the appeal. Minn. Stat. § 504B.371 (3); Minn. R. Civ. App. P. 108.02, subd. 4 (c). Should motion the court that tenant should pay rent as it becomes due and not up front.
- ▶ **Hold over exception-** In an appeal of a case for a tenant who remains in the unit after notice to quit or end of lease the tenant cannot stay pending appeal if landlord post bond to pay cost and damages.
- ❖ **Judge review-** Tenant can ask district court judge to review referee decision. Must be filed within 10 days of a ruling from the bench or 13 days from e-service of the order. Execution of writ is stayed if tenant pays a bond. Must request transcript within 24 hours of notice of review filing. Minn. Gen. R. Prac. Rule 611

HOUSING COURT RULES

- ❖ Rules specific to housing court:
- ❖ **Non-attorney agent representation-** A non attorney agent may file an eviction and appear on behalf of a landlord in housing court if a power of authority is executed in compliance with Minn. Gen. R. Prac. 603
- ❖ **Copy of termination notice-** In hold over cases, the landlord must include the termination notice with the complaint or provide it to the tenant at the initial appearance, unless the landlord does not possess a copy of the notice or at the hearing the tenant acknowledges receipt of the notice, Minn. Gen. R. Prac. 604(c)
- ❖ **Copy of lease-** In breach of lease cases, the landlord must include with the complaint a copy of the lease or provide it to the tenant at the initial appearance, unless the landlord does not possess a copy of it, Minn. Gen. R. Prac. Rule 604(d)
- ❖ **Filing of affidavit of service-** affidavit of service shall be filed with the court by 3:00 p.m. 3 days before the hearing. Court may dismiss if this is not complied with. Minn. Gen. R. Prac. Rule 605
- ❖ **Posting of withheld rent-** Tenant required to post rent withheld in reliance on a defense with the court. The court has more discretion in determining whether the tenant must pay into court and the amount that must be paid. Minn. Gen. R. Prac. Rule 608
- ❖ **Motion practice-** Motions may be made orally or in writing Motions may be made at any time including the day of trial. Minn. Gen. R. Prac. Rule 610
- ❖ **Judge review-** A party may seek review of the housing court referee's decision by a district court judge. Does not waive right to ultimately seek appellate review. Minn. Gen. R. Prac. Rule 611
- ❖ **Discovery-** parties shall cooperate with reasonable informal discovery requests by another party. Referee may issue expedited discovery order on request of any party. Minn. Gen. R. Prac. Rule 612



Non-Payment of Rent

- ❖ Non-Payment of rent most common ground for eviction
- ❖ An eviction action is equivalent to a demand for rent. Minn. Stat. § 504B.291, subd. 1
- ❖ Tenant can “redeem” the tenancy and stay in the unit by paying rent that is due, plus interest, court costs and attorney fees not exceeding \$5. Minn. Stat. § 504B.291, subd. 1

Common Non-Payment Defenses

- ❖ **Service-** failure of landlord to strictly comply with service requirements in Minn. Stat. § 504B.33.
- ❖ **Precondition to filing an eviction-** (1) failure of landlord to disclose the names of the manager of the building and person authorized to accept service of process in accordance with Minn. Stat. § 504B.181
- ❖ (2) failure of landlord to disclose to tenant that property is in foreclosure or contract for deed cancellation before entering into lease
- ❖ (3) Look at lease to see if lease requires notice, passage of time period, etc. before filing eviction
- ❖ **I don't owe the rent-** rebuttable presumption that the rent has been paid if the tenant produces a copy or copies of one or more money orders or produces one or more original receipt stubs evidencing the purchase of a money order, if the documents: (i) total the amount of the rent; (ii) include a date or dates approximately corresponding with the date rent was due; and (iii) in the case of copies of money orders, are made payable to the landlord. Landlord can rebut with business records showing rent is owing. Minn. Stat. § 504B.291, subd.1
- ❖ **Partial payment-** Landlord has accepted a partial payment of rent before and the lease does not have a non-waiver clause. Minn. Stat. § 504B.291, subd.1 (c)
- ❖ **Minneapolis, Brooklyn Center, Saint Louis Park Notice Requirement-** Minneapolis Code of Ordinances 244.2060 requires 14 day written notice, St. Louis Park City Code Sec. 8-337 requires 7-day notice before filing eviction for non-payment, and Brooklyn Center requires 30-day notice.

Covenants of Habitability

- ❖ Landlord's duty to fulfill covenants of habitability and tenant's covenant to pay rent are mutually dependent. When landlord does not fulfill the duty some or all of the rent is not owed. Tenant may raise defense of violation of covenants of habitability in eviction action brought by landlord- *Fritz v. Warthen*, 213 N.W.2d 339, 341-42 (Minn.1973).
- ❖ Tenant may be required to deposit past due rent amounts into court if withholding rent in reliability on habitability defense- Minn. Gen. R. Prac. Rule 608
- ❖ Affirmative defense and tenant bears burden of proof that habitability issues exist.
- ❖ Landlord defenses are limited by Minn. Stat. § 504B.415- (1)repairs don't exist or have been remedied, (2)tenant willfully or neglectfully caused the repair issues, (3) tenant unreasonably refused landlord entry to make repairs



BREACH OF LEASE

- ❖ **Breach must be “material”**- In an eviction action for breach it is necessary to determine not only if the allegations in the complaint are true, “but also whether the allegations, if found to be true, demonstrat[e] a material breach of the lease agreement.” *Cloverdale Foods of Minnesota, Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn.App. 1998)
- ❖ **Material breach**- material breach goes to the root or essence of the contract, so substantial and fundamental that it defeats the object of the parties in entering into the contract, and where the injury is irreparable or damages would be inadequate or difficult or impossible to determine. *Skogberg v. Huisman*, No. C7-02-2059, 2003 WL 22014576 (Minn. Ct. App. Aug. 2003) (unpublished)
- ❖ Breach of lease evictions are case specific. The terms of the lease control. Landlord will have to specifically identify provision of the lease that tenant allegedly violated.
- ❖ **Combined allegations**- the landlord can allege both non-payment of rent and breach in the same action. The claims are heard as alternative grounds. Tenant not required to post outstanding rent to the court to defend against claim of breach of lease. Minn. Stat. § 504B.285, subd. 5

Common Affirmative Defenses

- ❖ **Waiver**- landlord waived breach by accepting rent after having knowledge of the alleged breach (lease may have non-waiver clause)- *Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907).
- ❖ **Victim of violence**- the sole basis of the eviction is that the tenant or authorized occupant in the household has been a victim of domestic abuse, criminal sexual conduct, or stalking. **Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a)**
- ❖ **No copy of written lease**- Landlord failed to provide tenant a copy of the lease before filing the case. Case cannot involve disturbing the peace, malicious destruction of property, or illegal drugs. Minn. Stat. § 504B.115
- ❖ **Landlord failure to accommodate disability**- Basis for eviction is related to a disability and landlord failed to provide accommodation. 42 U.S.C. § 3604(f)(3); 24 C.F.R. Part 100; *Douglas v. Kriegsfeld Corp.*, 884 A.2d 1109 (D.C. Ct. App. 2005); Minn. Stat. § 363A.10; *Schuetz v. Anderson*, 386 N.W.2d 249, 253 (Minn. Ct. App. 1986).



HOLD OVER

- ❖ **Hold over-** When a definite term lease ends or the time period in a notice to quit a periodic lease expires and a tenant remains in the unit then the tenant is holding over.
- ❖ Landlord does not have to give a reason to for notice to quit or to not renew lease.

Common Defenses

- ❖ **Retaliation**- affirmative defense for tenant to show that landlord ended lease because tenant sought to enforce rights under lease or the law or tenant made a good faith report to housing inspector. If notice to quit is served within 90 days of tenant's protected action then burden is on landlord to prove non-retaliatory purpose. Minn. Stat. § 504B.285, subd.2
- ❖ **Discrimination**- Notice was given because of tenant being a member of a protected class. *Barnes v. Weis Management Co.*, 347 N.W.2d 519, 522 (Minn. Ct. App. 1984); 42 U.S.C. § 3604; Minn. Stat. § 363A.09.
- ❖ **Waiver**- Landlord waived notice to quit by accepting rent after the move out date. Landlord could also waive notice by filing a combined complaint for hold over and non-payment.
- ❖ **Improper notice**- notice improper under the lease or under Minn. Stat. § 504B.135
- ❖ **Mortgage foreclosure**- if tenant's lease began before the expiration of the redemption period once the landlord's property is foreclosed the immediate successor in interest must provide at least 90 days' written notice to vacate given at the end of the redemption period and effective no sooner than 90 days after expiration of the redemption period. Minn. Stat. § 504B.285, subd. 1a.
- ❖ **Contract for deed cancellation**- a tenant of a landlord whose contract for deed was cancelled is entitled to two-months written notice. MINN. STAT. § 504B.285, subd. 1b.

Violation of Minn. Stat. § 504B.171

- ▶ **Illegal activities-** Every oral or written lease now includes a requirement that the following activities will not be allowed on the premises:
 - ❖ **Drugs-** Making, selling, possessing, purchasing or allowing illegal drugs
 - ❖ **Guns-** Illegally using or possessing firearms
 - ❖ **Stolen property-** Allowing stolen property or property obtained from robbery
 - ❖ **Prostitution-** Allowing prostitution or related activities
 - ❖ **Expedited timeline-** Evictions brought under this section are heard within 5 to 7 days instead of 7 to 14 days. Landlord must file affidavit with eviction complaint stating facts that support expedited hearing. Minn. Stat. § 504B.321, subd. 2
 - ❖ **Stay of writ-** Execution of the writ takes priority and court may not stay execution of the writ for substantial hardship. Minn. Stat. § 504B.361, subd. 2; Minn. Stat. § 504B.345, subd.1(d)
 - ❖ **Knowledge defense-** tenant must know or have reason to know of activity. Lack of knowledge is a defense.



Practice Tips

- ▶ Initial Client meeting
- ▶ What information to gather from client?
 - ❖ Address of the unit and what type of housing (multi-unit complex, duplex, single family home etc)
 - ❖ Identity of client's landlord
 - ❖ Lease type and length- do you have a written lease?, does it end at some date or is it month-to-month.
 - ❖ Rent- how much is due, when is it due, does client have a subsidy, does client have a rep payee, does client pay with cash or money order, does client have receipts for rent paid.
 - ❖ Narrative about the issues with landlord- client's perspective on landlord's motivation for filing case- ie. Discrimination, retaliation, repairs problems, disturbing neighbors, does not like tenant.
 - ❖ What does client want to do- does client want to stay, does client want to move out and needs more time



Important Documents

- ❖ The lease
- ❖ Notices to and from landlord
- ❖ Records of payments to the landlord
- ❖ Inspection reports, relevant police reports
- ❖ Pictures
- ❖ Court File documents
- ❖ Want to examine any documents client has in their possession that client indicates are related to the tenancy.

- ▶ Learn the law
- ▶ Read the lease
- ▶ Be practical
- ▶ Be creative
- ▶ Be the Nature Boy!!!!!!

