



Rent escrow requirement prevents tenants from challenging poor living conditions, lawyers say Landlords benefit from a court directive that is a violation of due process, housing litigators say.

By Randy Furst Star Tribune
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Latora Thompson, who previously rented from landlord Steven Meldahl, poses for a photo outside her new home in Minneapolis on Friday.

Latora Thompson has unhappy memories of the north Minneapolis house she rented from landlord Steven Meldahl, who last week was fined \$133,500 by a Hennepin County judge.

She spent a winter in the house on the 300 block of 23rd Av. N without an operating furnace. Mice got into her food and crawled over her children's toys. The dishwasher stopped working and the oven of her gas range did not operate. A city inspector told her to stay out of the basement because of asbestos.

Complaints to Meldahl went unresolved, she said. "It was a terrible experience."

Thompson, 33, and other Meldahl tenants were unable to contest the living conditions, because of a court requirement that tenants pay back rent in order to challenge the habitability of a rental unit, according to Mark Iris, an attorney with Mid-Minnesota Legal Aid.

The requirement is under fire by Twin Cities housing attorneys who say it victimizes tenants.

Iris has represented dozens of Meldahl's tenants and says the landlord runs an "eviction for profit scheme," noting that Meldahl estimates that he evicts 96 to 97% of his tenants in a given year, according to court documents.

Tenants, already hesitant to pay rent because of substandard housing conditions, find they are unable to challenge evictions or habitability standards until that back rent is paid in escrow with the court, Iris said. Meldahl keeps unlawfully raising their rent, Iris said, so they are always behind and not in position to put up back rent. They are forced to pack up and leave.

David Shulman, one of Meldahl's attorneys, declined to comment Friday.

The practice of making tenants post back rent with the court to challenge an eviction on habitability issues is "draconian" and unconstitutional, according to an article in *Bench & Bar Magazine*, the publication of the Minnesota State Bar Association. The article was written by Jim Poradek, a tenants rights litigator at the Housing Justice Center in St. Paul, and Luke Grundman, managing attorney of the housing unit of Mid-Minnesota Legal Aid.

State law allows a tenant to defeat an eviction action for non-payment of rent if the housing conditions violate habitability standards, Poradek said in an interview.

"The problem is that many housing courts in Minnesota have built in a requirement that before that defense can be heard by the court, the tenant has to put up the back rent," he says. "It creates a pay-to-play or a pay-to-defend requirement before the tenant can actually raise their statutory right in court. In our view it is a quintessential violation of due process."

The two attorneys cite the "Minnesota Housing Court Benchbook," published in 2020, compiled by Hennepin Court Referee Mark Labine, who is now a part-time referee. The book describes itself as "a guide to help judges in Minnesota work through housing court cases that come before them."

The book notes that if a tenant wants to contend the property has habitability issues, "then you need to have tenant deposit rent owed to the court and schedule a hearing." The judicial order would then state "that if the tenant does not deposit the money ordered into escrow, that the hearing shall be canceled and the writ [to evict] issued."

The book explains that "sometimes the real problem is that [the] tenant simply does not have the money to pay the rent owed and the deposit requirement will resolve the issue. Often, when tenants understand this will happen, they are willing to settle out the case and work either on a payment agreement or they will agree to move out at some date."

Poradek and Grundman insist this is not how the Minnesota court system should work — and say it leads to more evictions and homelessness.

In a statement, Labine said the requirement is only following the law. He notes a 1973 decision by the state Supreme Court that says that "once the trial court has determined that a fact question exists as to the breach of covenants of habitability, that court will order the tenant to pay the rent to be withheld from the landlord into the court, and until final resolution on the merits, any future rent withheld should also be paid into courts."

However, Poradek and Grundman say in their article that the 1973 decision requires the posting of future rent, not back rent. They also say that the high court said the determination should be made quickly "and this procedure will not have to be used" in the majority of cases.

In his statement to the Star Tribune, Labine said, "I have no opinion as to whether or not this requirement to have tenants deposit rent into court when they have habitability defenses is constitutional or not. Smarter people than me will have to make that decision. I know I found rent escrow a useful tool to get repairs done when needed and at the present, it is required by the housing statute and the Supreme Court."

Larry McDonough, another attorney with the Housing Justice Center who has helped write most of the housing legislation enacted in Minnesota since 1988, also believes the requirement is a violation of a law that needs to be fixed. He said a legislative effort to address the issue stalled earlier this year.

McDonough said he is on a committee appointed by the state Supreme Court that advises on general court practices, and if the legislature does not act next spring, he may ask the committee to propose to the high court that it alter the requirement.

In the meantime, the fine levied against Meldahl includes no restitution to tenants, though Minnesota Attorney General Keith Ellison, who brought the case, asked for it.

"I wish they had been compensated for what Meldahl put them through," he said in a statement to the Star Tribune last week.

Tamara Daniels, 28, a former Meldahl tenant, who lived through a winter without an operating furnace, walls that were falling apart and an infestation of mice, said it's horrible tenants aren't receiving restitution.

"We are the ones who lived in that condition," she said. "The property was not in a livable condition and we still had to pay rent."

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