



VIA EMAIL

July 1, 2020

Dear Saint Paul City Council and Mayor:

The Housing Justice Center previously submitted written comments in support of the City of Saint Paul Proposed Ordinance 20-14. In response to additional questions, we submit these comments about the specific issues related to Just Cause notice requirements under 193.05 of the proposed ordinance.

The Rationale for Just Cause

During the term of a lease, private landlord can generally terminate the tenancy for two reasons – nonpayment of rent or a breach of the lease. However, current Minnesota law does not require private landlords to provide a reason for *nonrenewal* of a tenancy at the end of a term. Landlords can – and do – refuse to renew a tenant’s lease for any reason or for no reason. This is in contrast to tenants in certain federally subsidized housing, such as public housing, project-based Section 8, and Low-Income Housing Tax Credit properties, who have protections against nonrenewal without good cause.

Recent scholarship has drawn attention to the prevalence and detrimental effects of both formal evictions and lease terminations, sometimes known as “informal evictions”. Dr. Matthew Desmond, Professor of Sociology at Princeton University and author of the Pulitzer Prize winning book, *Evicted: Poverty and Profit in the American City*, emphasizes the importance of addressing both formal and informal evictions. The Milwaukee Area Renters Study (MARS) found that informal evictions accounted for twice as many forced moves as formal evictions.

Recent studies of eviction trends in Saint Paul, Minneapolis, and Greater Minnesota have focused exclusively on formal eviction, citing a lack of data sources tracking nonrenewals or lease terminations. According to a 2018 report, over 1,700 evictions are filed in Minneapolis each year. Another report found that approximately 16,000 evictions were filed in Minnesota in 2017. Anecdotal evidence suggests that the prevalence of lease terminations and nonrenewals in the metro area would mirror the findings of the MARS study.

In addition to the quantitative data, qualitative data from legal services agencies also bear out the need to consider extending good cause protections to the private market. In 2015, the Crossroads Apartment complex in Richfield, a multi-building community with almost 700 households, was sold. All residents were given notice that their leases would not be renewed,

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but they were told that they could reapply under the new screening criteria. Residents who had been lease compliant and were able to afford the new rents were denied the ability to stay in their apartments because they were not able to meet new credit or rental history standards.

Community based organizations and legal services staff have also relayed stories of retaliatory nonrenewal notices because of tenants contacting inspections or requesting repairs be made. While there are anti-retaliation laws in Minnesota's housing statutes, they are only able to be raised as a *defense* to an eviction action being filed. In other words, in order for a tenant to claim that a nonrenewal was due to retaliation, they would need to stay past the vacate date (hold over), have an eviction action filed against them, and then appear in court to raise retaliation as a defense to the eviction. Most tenants are not willing to risk an eviction on their record in order to raise a retaliation defense, and instead simply move out.

The application of nonrenewal can also be done in a discriminatory manner with few avenues for enforcement of fair housing or human rights protections. Because under current practice a landlord can nonrenew a lease for any reason or no reason at all, nonrenewals are used as a mechanism to displace low income households of color in the process of upscaling unsubsidized affordable housing. In rare cases, it has been possible to document the discriminatory nature of nonrenewals in the context of upscaling through discriminatory public comments, but since landlords are not required to provide a rationale for displacement of current tenants this form of discrimination can happen unchecked. This is one of the reasons that we included Just Cause protections as a recommendation in our report to the Fair Housing Implementation Council as a policy that assists communities in their efforts to Affirmatively Further Fair Housing.

Just Cause ordinances are within city authority

Minnesota Statute 504B.135 prescribes the process for terminating a tenancy at will but does not address the reasons why a party may terminate. As such, a city ordinance identifying acceptable reasons for termination would not conflict with state law.

Minnesota landlord-tenant law expressly recognizes the power of local governments to use local health and safety ordinances to regulate the conditions under which a landlord may operate its rental property. Critically, Minn. Stat. § 504B.161 and the landmark Minnesota Supreme Court case *Fritz v. Warthen* prohibit a landlord from evicting a tenant for nonpayment of rent when the landlord has failed to operate its rental property "in compliance with the applicable health and safety laws . . . of the local units of government where the premises are located during the term of the lease." § 504B.161, subd. 1(4); see 213 N.W.2d 339, 342 (Minn. 1973) ("Permitting these matters in defense does not alter or frustrate the unlawful detainer statute's purpose of returning lawful possession in an expeditious manner.").

The preemption doctrine was revisited by the Minnesota Supreme Court earlier this year in *Graco v City of Minneapolis*, 937 NW 2d 756 (Minn. 2020). In *Graco*, the Court decided that the Minneapolis \$15/hour minimum wage law was not preempted by the state minimum wage

statute under any of the three forms of preemption: express preemption, implied preemption, and field preemption. In reaching this conclusion, the Court emphasized that "[a]s a general rule, conflicts which would render an ordinance invalid exist **only** when both the ordinance and statute contain express or implied terms that are irreconcilable with each other." *Id.* at 816 (citation omitted). As mentioned above, 504B.135 does not address the reason why a party may terminate a tenancy at will. In that case, Just Cause would create a conflict with existing law and would not be preempted.

The recent Minnesota Supreme Court decision in *Chamber of Commerce v. City of Minneapolis*—which affirmed the Minneapolis paid sick leave ordinance— further supported the proposition that it is entirely appropriate for a local ordinance to provide greater protections than Minnesota statute so long as compliance with both is possible: “A rule of law that finds a conflict wherever an ordinance adds a requirement different from state law—no matter the substance of the statute or the ordinance—would preempt every local ordinance setting a standard higher than the floor set by the Legislature. Such a rule would unreasonably constrain local government and undermine the powers allowed to cities by state law.” *Minnesota Chamber of Commerce v. City of Minneapolis*, No. A18-0771, 2020 Minn. LEXIS 326, at *13 (Minn. June 10, 2020).

Here, as in *Graco* and *Minnesota Chamber of Commerce*, Just Cause is easily reconcilable with the relevant state statutes and therefore is not preempted.

Just Cause is an important tool for the city to meet its duty to Affirmatively Further Fair Housing. Protecting renters in Saint Paul from arbitrary displacement is within the broad societal interest and meets a critical public purpose. Just Cause protections do not impair the reasonable investment-backed expectations of landlords, and fall squarely within the City’s powers to protect the health and safety of its people.

We once again thank the authors of these proposals and call on the Saint Paul City Council and Mayor to pass and implement them while continuing to pursue additional meaningful steps to ensure that everyone in Saint Paul has equitable access to safe, stable, and affordable places to call home.

Truly,

A handwritten signature in black ink, appearing to read 'MK', with a long horizontal flourish extending to the right.

Margaret Kaplan
President
Housing Justice Center