

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1147

2007 HOUSE JUDICIARY

HB 1147

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1147


House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/15/07

Recorder Job Number: 1042, 1047

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1147.

Rep. Todd Porter: I am the sponsor of this bill. This particular bill in front of you is another bill that I was contacted on in regard to the termination of leases. It really relates to the automatic renewal of leases and the situation that happens is very prevalent in college towns and students losing their deposits. I do have a constituent, whose child did lose or got caught up in this problem, who brought forth this bill draft.

Chairman DeKrey: Thank you. Further testimony in support of HB 1147.

Tom Bair: (see attached testimony). I am an attorney and if you wade through the chapter on leases, you come to the realization that the landlord can't be doing this, this is illegal. But the fact is that they do it anyway, and my guess is that most tenants don't bother to fight it and the landlord winds up with another month's extra rent. You haven't got a vacant apartment from January 1 to February 28, how is the poor college student supposed to know if the apartment is even vacant during that period. There is nothing to prohibit the landlord from going out and releasing it and double dipping, during that situation. The purpose of this statute was to be fair to both sides. If this situation happens, yes the tenant probably should have given a little earlier notice, but it's really not fair for the landlord to get two month's rent. The

purpose here is that if this situation happened, the landlord gets another 30 days; the tenant only gets stuck with one month's rent. I think it is a fair compromise.

Rep. Klemin: You pointed out these other sections of the law; I am wondering if this new proposed statute here doesn't create a conflict with these other statutes. For example, in looking at section 15, which I'm sure you looked at, in there it says "in tenancies for month-to-month, and unless the parties have otherwise agreed in writing to a longer notice or a different notice time, either party may terminate the tenancy by giving at least 30 days written notice at any time." Well that's exactly the situation we've got in this apartment lease, is that if this were a month-to-month tenancy, was this a month-to-month tenancy.

Tom Bair: No, long term.

Rep. Klemin: So this wasn't a month-to-month tenancy. That being the case, the bill we've got here refers to leases that are month-to-month tenancies and don't apply to leases for long term.

Tom Bair: What happens though, and the way it works together, is if you have a lease for a term, section 6.1 says that if you have a lease for a term for a dwelling, at the end of the period, it can convert to a month-to-month. That's how they come together.

Rep. Klemin: That gets back to my original question, looking at section 15, which says that right now under the law, either party can terminate the tenancy by giving at least 30 days written notice at any time, unless they agreed in writing to a longer notice period. We would have a statute that would say, notwithstanding any provision of the lease, that's going to be 30 days notice at any time even if they have agreed to a longer notice period. So don't we have a conflict with section 15 because section 15 says exactly the opposite?

Tom Bair: I don't think so. I didn't draft this. Maybe it could be redrafted. The second page I did take a look at changing some language to make it look more consistent with those

statutes. I think the intent here, the thing about a lease, if you're a college student in Fargo, the landlord give you a lease requiring 60 days notice; what are you going to do about it. You don't have any bargaining power. You either that lease or you don't get an apartment. The idea here is to just cut the period to 30 days, because that should be long enough for both parties.

Rep. Klemin: Isn't that what section 6.1 does though, it seems to me I recall that came up.

Tom Bair: I agree that's what it does. But what happens is the landlord prefers the 60 day notice anyway. If I practiced law in Fargo, I would be happy to take him to Small Claims Court and I think I'd win. I haven't really had a call for this in Bismarck, and it's not really practical to go to Grand Forks to fight the landlord for 10 minutes because you know you're going to win. If they get letters from a lawyer, they drop it, because they know they're wrong.

Rep. Klemin: That isn't the point here; you've already said that this situation is covered in the existing law, so now we're putting in another statute that covers the same thing, except it's inconsistent with some of the provisions of these.

Tom Bair: But it does a couple more things; one thing if they double dip, they could be liable for treble damages. This makes it clearer; I don't think it makes it more confusing.

Rep. Klemin: Doesn't the landlord already have the obligation under this same chapter to mitigate damages.

Tom Bair: Sure they do.

Rep. Klemin: So that would indicate that they can't double dip.

Tom Bair: In these situations where the landlord have written to my client and say he wants the extra rent, I've written back to him and said I want to know who occupied that apartment during that interim period of 60 days. They won't tell me, they won't answer.

Rep. Klemin: My question is, doesn't the statute on mitigation of damages...

Tom Bair: Without starting a legal action and subpoenaing their records, how do you know they ever do it?

Rep. Klemin: You didn't answer the question.

Tom Bair: Yes, I did answer the question; yes they do have a duty to mitigate damages.

Rep. Klemin: We've got some other provisions here that say such things as notwithstanding the provisions of section such and such, then the statute goes on and that's what it says in 06.1, notwithstanding the provisions the section 47-16-06. What it doesn't say is notwithstanding any provision on the lease. We've got constitutional provisions that say we can't pass any law incurring the obligation of contracts, and of course, the lease is a contract. How does this not violate both the ND and federal constitutions?

Tom Bair: Well, that happens all the time. The answer to your question is you don't apply it to existing leases, but you apply it to lease that are entered into after the lease is passed. That's the answer to that.

Rep. Klemin: I'm a little confused on the language here. On lines 8 and 9, "the lessee gives the lessor at least 30 days' written notice at any time". So that could mean that the lessee could give the lessor 30 days notice on the last day of the month that he's vacating that particular day. I'm giving you 30 days notice that I am vacating. Then we go on to line 9, "if less than 30 days notice is given", well in the example I just gave you, he did give a 30 days notice, I'm vacating today, because it says at any time. Then if we go to line 9, since he didn't give less than a 30 days notice, does that mean the lessor can't bill them for the next month.

Tom Bair: He could bill for 30 days. He could bill him for the next month for the days that the apartment wasn't occupied. That's why in my example I crossed it, where it says the following month, I put the following 30 days. In your situation, the landlord gets one month's rent. Which I think is fair.

Rep. Klemin: I understand, but I guess if we look at lines 9 and 10, it only applies if less than a 30 days notice was given and my example was that he gave 30 days notice that he was leaving that last day. So if you only gave 29 days notice, I could see how it would apply; but he gave 30 days notice, so it seems by its own terms it wouldn't apply.

Tom Bair: The intent is that the landlord can get up to 30 days notice.

Rep. Klemin: Then we go on to lines 10 and 11; the lessor may not bill or apply security deposit money for more than 30 days rent for a month-to-month tenancy. What if the tenant owes more money than that?

Tom Bair: I didn't draft the bill.

Rep. Klemin: But you are here explaining it. Let me give you an example, this happens all the time. The tenant says, I'm a little short landlord, I can't pay the rent this time, and I will have it for you next time. The next time, same story. So now we're 60 days in arrears here on the rent, but if we pass this statute and the landlord's only going to be able to charge him for one month. You can't go back and get the other month, but because of having a kind heart and letting the person stay, is going to be penalized. Furthermore, what if there is some other money owed. Does this apply to that for damages, for example?

Tom Bair: The way I read it, it would not apply to other damages. I don't know if your problem is a very practical problem. I think that in most leases for dwelling, the security deposit is about a one month of rent. I don't think the landlord is going to leave any money on the table in very many situations.

Rep. Klemin: So we've got a situation where the landlord is, applying security deposit money is one thing, but billing the tenant for something is the other alternative. So does this say on lines 10 and 11 that if the tenant owes rent for more than one month, the landlord can only go for one month.

Tom Bair: I think that is referring to the notice period. If they're in arrears, it could be drafted better. I understand your point. What we're talking about here is after the tenant gives the notice that he's leaving at the end of his term, the landlord can get 30 days. If he is in arrears for rent prior to that, that is only fair to the landlord as well.

Rep. Klemin: That's not what it says.

Rep. Meyer: I would like to thank you for bringing this forward along with Rep. Porter. I'm not sure of the correct legal language or how it should be stated. This has been going on for a long time. This exact same scenario happened to my daughter in college, who took over a lease in January and she gave 30 days notice, and that wasn't a problem until it rolls around to the end of her term there and she was billed for 90 days. There was a kid in that apartment the same day she left it. She was still billed for a 90 day period. We took it to Small Claims Court and that lasts about 5 minutes and they said, well it says here that you have to have a 90 days notice, and if you correct the language here, I think it would be good. I guess this has been a problem for many years, at least 10 years.

Rep. Koppelman: I'm still a little confused, if I'm hearing your testimony correctly Mr. Bair, I think what I'm hearing you say is current law already prohibits this, but people are doing it anyway so let's pass another law. Is that essentially the concern?

Tom Bair: I guess this would have a little more teeth in it.

Rep. Koppelman: The more teeth you're referring to, you're criticizing landlords for double dipping, which is already illegal, they're supposed to mitigate damages; so that should be provable in court that they are disallowed from doing that in court under current law. Then this bill calls for treble damages for violation of this act. So is that triple dipping on the part of the tenant.

Tom Bair: I don't think so.

Rep. Koppelman: Explain the difference.

Tom Bair: Well, the tenant's only going to be entitled to treble damages if the landlord violates the law. If the landlord double dips, then the tenant maybe entitled to triple dip. The problem we have here and I think Rep. Meyer pointed out, is that it's not a level playing field. You have big corporate landlords that have these leases; this isn't grandma renting out her basement. These are pre-printed forms. They probably have hundreds of leases in Grand Forks, hundreds in Fargo. It's not a level playing field. Just anecdotal evidence will tell you that landlords are coming out ahead. The college student that graduates in December, they have a job in Minneapolis in January, they can't fight this. They get the letter, they pay the money, they forget, the landlord gets the extra rent.

Rep. Koppelman: I'm certainly sympathetic to that kind of scenario. There are a lot of mom and pop landlords. You go around any of those campuses in Fargo and Grand Forks, etc. It's not all big corporate entities. There are a lot of people that rent out their basement, as you just said. They rent out an upstairs apartment.

Tom Bair: I've never heard of a problem with them. I'm talking about big corporations.

Rep. Koppelman: Are you saying that contract law should not be allowed, if a college student (I've had 3 children myself who have been college age in the last several years). I just helped one of my children draft a letter to his landlord, because his lease ends in March, and he's already moved out, but he knows that he's on the hook until March, because that is when he signed the lease for. We wrote a letter, they required a 60 day notice. He wrote it 90 days in advance, but he's still got to pay that rent; he knows that. Isn't part of being a responsible adult?

Tom Bair: I agree, you should read your contract. But there are all kinds of examples in the law where certain terms are allowed. There are all sorts of examples. I can't argue with your point there, the tenant has to take a little responsibility.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Greg Thompson, ND Apartment Association: We are opposed to this bill. I think in listening to the testimony, I'm not learning anything different. There are two points that I want to make to the committee: 1) this legislation will conflict with existing law; and 2) it does impair the party's ability to contract. I want to emphasize those two points to the committee. As I believe Rep. Klemin pointed out, in NDCC 47-16-15 does allow parties to contract for a longer notice provision. That's very clear in the statute; it clearly says that unless the parties have otherwise agreed to a longer or different notice period in writing. I think that goes back to even Mr. Bair's comment, that people need to read their lease. If they don't understand something, ask questions about what's in there. It really boils down to reading the lease. This legislation would all conflict with 47-16-14, subsection 2, which says the leasing of real property, terminates and then subsection 2, says, by the mutual consent of the parties. So that's consistent again with 47-16-15 which again says that if you guys want to agree to a different notice period, or a longer notice period, that's between the two of you to work out. I can sympathize with Mr. Bair's situation; but again it boils down to the fact that people, you have to read the lease. It's just that clear. I should point out too, that I don't think the current state of the law only benefits the landlord. There are many situations where 60 day notice also benefits the tenant. Remember that notice can be given by either party. Many times where it's coming to the end of the lease, where the landlord just decides that this is not the kind of tenant they want to keep, so they give that tenant a 60 day notice. That same obligation is on the landlord to give that 60 day notice in writing. That gives the tenant 60 days then to find

another apartment as opposed to 30 days. Granted, in markets that might be soft, it's not terribly difficult for that tenant to find another housing unit. But when the market tightens up, which you know it will at some point again, 60 days sure beats 30 days. I think it all boils down to reading the lease, understanding the lease, asking questions. But let's not pass a piece of legislation that interferes with the party's right to contract. If people are still hung up on that, I would suggest that a compromise, just one small piece of legislation that says if the parties want to contract for more than a 30 day notice put it in conspicuous writing in the lease. We have no problem with that, whatsoever. Almost every one of my clients already do that, they put it in bold print and they make the tenant initial it. Here it is people; this points it out to people even more. It's not required right now in law, but management companies and mom and pop landlords are already doing this.

Rep. Meyer: In current statute right now, on the 90 day notices where they moved out and they rented it again, is the double dipping an issue.

Greg Thompson: The double dipping is clearly illegal. As Rep. Klemin pointed out, there's a statute in ND that requires the landlord to mitigate damages. The typical scenario that I see is the landlord is going to go in there, try to re-rent it, clean it up first, of course. If they re-rent it after 30 days and then they start collecting rent, obviously they won't need another 30 days from that. If they double dip, then the tenant certainly has the right to damages in that situation.

Rep. Meyer: So you're only recourse if that happens, is that you have to retain an attorney and take them court, if you're the tenant.

Greg Thompson: First of all small claims court would address that. I don't think anybody would have to retain an attorney. Second, I can imagine the judges in Cass County would not be happy in the least if a landlord got caught double dipping.

Rep. Meyer: My second question, along that same line. Has any data been put together and I'm really targeting this for the NDSU housing, any data been put forward on how often and how frequently this is happening.

Greg Thompson: I'm not aware of any data. There is a person who is going to testify in opposition also; who's in the business and has not had hardly any issue with this at all. As an attorney, I do get a lot of questions on this area, and I'm not aware of any major problems with this at all.

Chairman DeKrey: Thank you. Further testimony in opposition to HB 1147.

Michelle Modine, Goldmark: We are opposed to this bill. I work with property management real estate for 8.5 years. I currently work with Goldmark Property Management out of Fargo. I am here to represent their interests. One problem that I perceive with the passing of this bill has to do with the inconvenience that it would cause renters. I did poll a lot of my renters; they come into my office all the time. I polled them and asking them what their thoughts were. They said there were two problems they would encounter: 1) that 30 days did not give them enough time to look for another apartment, get approved for an apartment, pack and move. A lot of apartments may not hit the markets and would only be known about 30 days in advance. They wouldn't have that two month timeframe to prepare and look. In college towns, especially in Fargo and Grand Forks, a lot of our market is Generation Y. They love to shop around. The other concern was 2) the notice that we could give them if they were on a month-to-month tenancy. Passage of this bill would not only affect somebody who was renting but also the landlords. The tenants have various options as to termination requirements. We fully explain to everyone coming in, and we do pay special attention to students, because they are young and we explain everything to them, because a lot of times this is their first apartment. We're not out to trick anyone. I think a lot of wording in this bill could be misinterpreted

several different ways. In regard to the matter of double dipping, I would never do it. I'm sure it happens; although not very frequently that I've heard of.

Rep. Delmore: Are you aware of any cases where when the market is tight and I decide that I want to leave one apartment complex to get closer to school, or home, etc. Are you aware of anyone that has to pay rent in both places to hold the second apartment because of a 60 day notice?

Michelle Modine: If they choose to pay rent in two places, not because it was 60 days but because they liked the apartment so much.

Rep. Delmore: But you forced them to do that.

Michelle Modine: You could, but a lot of times it's because most of the leases are month-to-month tenancies.

Rep. Delmore: You are saying there are instances where someone may actually pay rent in two places, not just for 30 days but for 60 days, if the market tight and they really want that place.

Michelle Modine: Yes, if they do. But again it is their choice.

Rep. Delmore: Are there instances where you can immediately remove a tenant or shorten up your lease because of specified conditions which they caused.

Michelle Modine: Not because of state law. If a person has mitigating circumstances where they may need to break their lease, on a 12 month lease, in the middle of their lease, it has happened.

Rep. Onstad: You currently have a 60 day or 2 calendar month notice, so if you have a tenant who misses that and gives you a 30 day notice, your policy is what.

Michelle Modine: Our policy is that we do our best to re-rent that apartment for them so they are not paying rent for longer than their desired move out date. I try to work with the tenants, so they say good things about me, instead of bad words.

Rep. Onstad: If you're able to find renters in there, you will not assess them that one month extra.

Michelle Modine: Yes. From the day a new renter is in the apartment, the old tenant is no longer liable for the rent.

Rep. Klemin: I don't know if you allow pets in your apartment or not, but you might be familiar with the provision on the limitation of the amount of the security deposit, it can't be more than one month's rent unless you have a pet, and then it can be up to \$1500. Now, this bill that we have here, on lines 10 and 11, say the lessor cannot bill or apply security deposit money for more than 30 days rent for a month-to-month tenancy. How would you envision that applying to a person who had a pet and they paid the \$1500 security deposit?

Michelle Modine: Again, the way the bill is written, it could be taken one way or the other. I don't think the bill covers it well enough.

Rep. Klemin: The other part of this is it says the lessor may not bill or apply the security deposit if the tenant owed more than one month's rent, this would seem to say that you can't bill the tenant for more than one month's rent, regardless of how much they owe. Is that the way you read this.

Michelle Modine: Yes, that is how I interpret it.

Rep. Meyer: Just to be clear, the notification period, even though the lease expires on June 30th, and that's the contract you signed, you still have to send a notice two month's prior to the termination of your lease.

Michelle Modine: That is correct. We do send out reminders. A lot of people probably don't know when their lease ends, so actually about 75 days out, we send reminders that their lease is coming to an end on this date. We would like you to come in and renew it. At that point they call and we do follow up calls as well, to make it known that it is ending. I can't say that every company does that policy.

Rep. Griffin: Would there be less opposition, this situation arises many times when they lease for a year, and at that point it reverts to a month-to-month lease if the bill were redrafted to state, still having a 60 day notice for your year lease, so to get out at the end of the year, you would have to give a 60 day notice; but at the point where it reverts to a month-to-month because of the nature of the contract changed somewhat at that point anyway, then to have a 30 day notice during that period of time.

Michelle Modine: That's the part where I think it really affects us and the residents when it reverts to a month-to-month tenancy, if it's down to a 30 day notice, I think we need that time, especially if we want them to leave, 30 days isn't a lot of time for them to find another place to live.

Chairman DeKrey: Thank you. Further testimony in opposition.

Rocky Gordon, ND Apartment Association: I am opposed to this bill. I will be brief. There seems to be some issue or concern with the double dipping aspect of what has happened here. I just want to point out that under ND law already, if you improperly withhold someone's security deposit, we're already subject to treble damages which is pretty considerable. So I think that is already adequately addressed. The other thing I want to point out again is I think this bill is fraught with unintended consequences and I think they've been pointed out to you. I can pretty well assure you that if this bill is passed, we're going to be back here in two years trying to deal with those.

Chairman DeKrey: Thank you for appearing. Further testimony in opposition. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1147.

Rep. Koppelman: I move a Do Not Pass.

Rep. Heller: Second.

Rep. Meyer: I understand the problems with drafting this, but what's happening at the apartment complexes at NDSU and it's been going on for years. Like in our case, if you have proof that people had moved into this apartment, the same day my daughter was out, small claims court, we went there, it didn't take five minutes for them to say she owes it. I told them that someone was living in there now, but they said it didn't matter because she signed the lease. That was the extent of the small claims court experience. Perhaps when this happens to you, and it happens to so many kids, and in this case our daughter had taken over a lease in January and she had read the lease and asked them. She didn't even have the primary lease on it, she had taken it over, and she had talked to the kid she had taken it over from and also the apartment complex owner. Her lease terminated May 30th, they had already sent them a notice so that it terminated May 30th. They did that in January. Well it rolled around and guess what, she had to send a notice as a subletter that it was going to terminate so she had to send a notice too. I feel this section is being abused.

Rep. Koppelman: I really think that the issue here as Rep. Klemin pointed out during the hearing on the bill, really I think what the sponsors are trying to get at, and the advocates of the bill are trying to get at, are really already by and large there in state law. The problem becomes one of enforcement, not a statutory problem. I do see drafting problems and I can't support the bill as it stands.

Rep. Delmore: I think there needs to be some reassurances given to kids, particularly college kids, who may not read the lease in its entirety. I think to just defeat this bill without looking at some of the other provisions that are addressed, would be a travesty. I think we could work on this and do something for kids.

Rep. Dahl: Along those same lines, when the person from Goldmark stood up and told us about the notice period, I didn't believe that for a second; especially given the transient nature of students', opportunities for internships, etc. Her company said that they might work around those issues of moving, graduating and things like that, but that's just one company. I agree with Rep. Delmore that maybe we could do something else with this bill.

Rep. Griffin: I would agree that if it were changed a little bit, along the lines of the 60 day period for the whole year lease, then once that lease reverts to a month-to-month, I think at that point, since it is a month-to-month why a month shouldn't be sufficient notice.

Chairman DeKrey: If Rep. Koppelman and Rep. Heller want to withdraw their motion and second.

Rep. Koppelman: I do withdraw my motion.

Rep. Heller: I remove my second.

Rep. Kretschmar: These leases, especially in the college situations, have probably come before this committee for 17 sessions.

Rep. Meyer: Even if they just sat down and say verbally and in bold print, when you're ready to leave here in April, you need to be in here and tell us. The lady stated they love to do this, so I'm sure they would love to do that.

Chairman DeKrey: We will appoint a subcommittee to bring forth amendments. Rep. Dahl, Rep. Koppelman, and Rep. Griffin.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1147

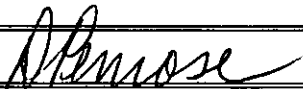
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/24/07

Recorder Job Number: 1775

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1147.

Rep. Griffin: The committee's intentions were to create a 30 day or one calendar month notice requirement to terminate a lease. One thing we've done is when you have greater than a 30 day notice requirement to terminate a lease, you put in a requirement that you would have the lessee initial it. If they failed to do that, it would revert to a 30 day lease. That would be a section 4. Section 5 ties in with this added part to 47-16-06, the new language at the bottom there. It was commonly believed amongst a number of people that what typically happens is that when you have a lease for a year, it reverts to a month-to-month lease at the end of that term. We could not find that language anywhere in the code. We couldn't find it, but there is a provision in the statute for an automatic renewal clause, we added that a term of year's contract and for residential purposes only, it will revert to a month-to-month lease. Then in subsection 5, when it reverts, then it's a 30 day or one calendar month.

Rep. Meyer: Second.

Chairman DeKrey: Further discussion on the amendment.

Rep. Koppelman: Does this bill deal with this version in 47-17-06 deal with the automatic renewal. Was there a measure in there that talks about, unless there's a contractual provision to the contrary.

Rep. Griffin: When I talked with Tim Dawson, the language he preferred is, except in the case of a lease that does not have a automatic renewal clause.

Rep. Klemin: According to your amendment to 47-16-06, this would only apply to residential property and only apply if there is no automatic renewal clause.

Rep. Griffin: Because the automatic renewal is covered under 47-16-06.1.

Rep. Koppelman: When we really started to look at the statutes governing this, we discovered that 47-16-06.1 says basically that when there is a renewal clause in the contract, the landlord has to give the lessee written notice within 30 days, kind of reminding them of this clause in your lease, if you pay us rent after the end of the lease, which is about to come due, and we accept the rent, then it's renewed. It's a notification requirement; however, in 47-16-06, this section we are looking at now, and the amendment, it seemed to almost conflict with that because it's sort of silent on leases that have that kind of provision. But leases that didn't have a provision would seem to say that if you pay rent after the lease is done, it is automatically renewed for the same term, which seemed kind of silly, because on one hand somebody puts a provision in the lease that says there's an automatic renewal and both parties sign it, that's what you're agreeing to, and it puts an extra burden on the landlord to say you have to give notice, but if you didn't have that provision, it would be renewed automatically for a year. This language Rep. Griffin has presented basically just clarifies that it's not really for a year, it's month-to-month after the end, unless you have this automatic provision in the lease.

Rep. Klemin: I have a problem with the notwithstanding stuff. You start off with subsection #4, notwithstanding, it refers to each other. Is there anyway to make this clearer without putting in all these notwithstandings.

Rep. Griffin: I agree with you, but the problem is that it is very unclear and without redrafting a large chunk of the code to get to this position, this is the type of language that we have to use, not preferable. I understand that it is hard to understand. In looking at subsection 4, I believe it says notwithstanding any other provision of law.

Rep. Klemin: So your basic provision that you're trying to get at in #4 is to require somebody to initial the lease, so they couldn't say they didn't know about it, even though they signed the lease.

Rep. Griffin: Yes.

Rep. Klemin: Then #5 under the termination of the lease on the last day of the lease, with a calendar's month notice. We don't have that anywhere already.

Rep. Griffin: #5 refers specifically to automatic renewal clauses. Under that automatic renewal clause, let's say you had a 60 day notice requirement and you have an automatic renewal clause, but however if you failed to give 30 days notice before the end of the lease about the automatic renewal, that clause says that it will convert to a month-to-month lease. At that point, once it converted to a month-to-month lease, then one calendar month's notice will suffice.

Rep. Koppelman: Just to clarify that, #5 really gets at the meat of what the bill originally tried to do. In the testimony they were talking about the situations where college students would get caught in a catch 22. Their lease was over, it was supposed to convert to a month-to-month, but a provision of the lease said you had to give 60 days notice. So in effect, it's not

month-to-month, so all this #5 does is just say that if it's month-to-month a calendar's month's notice is sufficient.

Rep. Klemin: Let me ask you this, in here on the termination of lease, this #5 deals with what happens if it's not turned into. Wouldn't it be more appropriate to put #5 into section 6-1, because you're referring to section 6.1, and this could be right at the end of 6.1.

Rep. Griffin: Originally when I drafted this part, that's where I put it, right underneath it as 6.2. Bill drafters preferred to have it where they put it.

Rep. Koppelman: I think Rep. Klemin had a good point. If you're reading that section, and you're right there, maybe it should be there to clarify.

Rep. Klemin: We're talking about what happens after 6.1.

Rep. Griffin: After it reverts to a month-to-month.

Rep. Klemin: It seems to me that you can just add a sentence to 06.1 and you don't have to be jumping around here.

Rep. Dahl: It's not completely out of place right here either, in regard to the termination of a lease.

Rep. Griffin: That's why we put it here in this particular section of law. We wanted to keep certain parts together.

Rep. Klemin: I guess I have another question about this. You talked about 1 calendar month in #4 and 5, whereas in #1 and 2 in existing language talks about 30 days notice rather than 1 calendar month. Those section 1 and 2 are 30 days and sections 4 and 5 are one month.

Rep. Griffin: The subcommittee discussed this issue, we originally had 30 days in there. We felt that because one month only had 28 days, you could be in the scenario where you gave notice on January 29, then it wouldn't suffice, so we put in one calendar month notice.

Chairman DeKrey: We will take this up later.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1147


House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/31/07

Recorder Job Number: 2458

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at HB 1147.

Rep. Griffin: Explained his amendment. If the lease reverts to a month-to-month, it will only require a one month's calendar notice. I move the amendment.

Rep. Koppelman: Second.

Rep. Klemin: So under #5, you have to give one month notice.

Rep. Griffin: Under #5, there is a provision under that automatic renewal where if you have an automatic renewal clause and you don't give 30 days notice prior to that date, it reverts to month-to-month. In that situation specifically and the situation listed up above, one calendar month's notice will suffice. Even if the lease says 60 days.

Rep. Klemin: It says, on renewals, except for automatic renewals.

Rep. Griffin: The thing with the automatic renewal section, you can have an automatic renewal clause but this whole 6.1 says that if you fail to give notice prior to automatic renewal taking effect, it will revert to month-to-month.

Rep. Koppelman: Let me walk you through on a practical sense as to how it actually works.

You have a provision in law right now that says that, 47-16-06, basically says that if a lease terminates and the record gets change, and the landlord keeps accepting the month, it

automatically renews on a month-to-month basis. However, this provision would say, well the law says that it renews automatically for the same period of time; but that is not really the case, the way the case law is structured, when it goes back to month-to-month. Some leases have a renewal provision, and sometimes the renewal provision is automatic and it says that if you don't notify the landlord within 60 days at the end of the lease that you're giving notice, the lease is going to renew automatically for the full length of the lease. In the current law, the landlord has to notify a tenant 30 days prior to that date, even if it is in the lease, saying "by the way, remember we have a renewal provision coming up and if you do this, this will happen". We didn't touch that. What we did change was that when the lease is signed, if there is an automatic renewal provision, that it has to be initialed. The idea there was what we discussed in the testimony regarding the problems encountered by the college students; which was when a lease reverted to a month-to-month at the end of the lease but it had a 60 day notice provision in the lease. So in some cases, apparently, the landlord is still trying to enforce that 60 day notice provision, even though the lease has gone month-to-month. This language clarifies the language. If it is a month-to-month lease, then one calendar month notice is sufficient.

Chairman DeKrey: We will take a voice vote on the amendment. Motion carried. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Seconded.

13 YES 0 NO 1 ABSENT

DO PASS AS AMEND

CARRIER: Rep. Kretschmar

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1147

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 47-16-06 and 47-16-15 of the North Dakota Century Code, relating to the notice of termination of residential leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-06 of the North Dakota Century Code is amended and reenacted as follows:

47-16-06. When a lease is presumed renewed. If a lessee of real property remains in possession ~~thereof of the real property~~ after the expiration of the ~~hire~~ lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the ~~hire~~ lease on the same terms and for the same time, not exceeding one year. Except in the case of a lease with an automatic renewal clause, if a lessee of real property for residential purposes remains in possession of the property after the expiration of the lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the lease as a month-to-month tenancy.

SECTION 2. AMENDMENT. Section 47-16-15 of the North Dakota Century Code is amended and reenacted as follows:

47-16-15. Notice of termination of lease.

1. A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in section 47-16-06 at the end of the term implied by law, unless one of the parties gives notice to the other of an intention to terminate the lease, at least as long before the expiration of the lease as the term of the hiring itself, not exceeding thirty days.
2. In tenancies from month to month, and unless the parties have otherwise agreed in writing to a longer notice period or a different notice time, either party may terminate the tenancy by giving at least thirty days' written notice at any time. The rent is due and payable to and including the date of termination.
3. If a landlord changes the terms of the lease pursuant to section 47-16-07, the tenant may terminate the lease at the end of the month by giving at least twenty-five days' notice.
4. Notwithstanding any other provision of law, any agreement that requires a lessee to give notice that exceeds one month from the end of a month to terminate a lease of real property for residential purposes must state the notice requirement and provide space for the lessee to initial next to the notice requirement. If the notice is not initialed by the lessee at the time of executing the lease, the lessee may terminate the lease on the last day of a month with at least one calendar month's notice.
5. Notwithstanding any agreement to the contrary, if a lease converts to a month-to-month tenancy under section 47-16-06.1, either party may terminate the lease on the last day of a month with at least one calendar month's notice."

Renumber accordingly

House Amendments to HB 1147 (70108.0106) - Judiciary Committee 02/02/2007

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 47-16-06 and 47-16-15 of the North Dakota Century Code, relating to the notice of termination of residential leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-06 of the North Dakota Century Code is amended and reenacted as follows:

47-16-06. When a lease is presumed renewed. If a lessee of real property remains in possession ~~thereof~~ of the real property after the expiration of the ~~hire~~ lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the ~~hire~~ lease on the same terms and for the same time, not exceeding one year. Except in the case of a lease with an automatic renewal clause, if a lessee of real property for residential purposes remains in possession of the property after the expiration of the lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the lease as a month-to-month tenancy.

SECTION 2. AMENDMENT. Section 47-16-15 of the North Dakota Century Code is amended and reenacted as follows:

47-16-15. Notice of termination of lease.

1. A ~~hire~~ lease of real property for a term not specified by the parties is deemed to be renewed as stated in section 47-16-06 at the end of the term implied by law, unless one of the parties gives notice to the other of an intention to terminate the lease, at least as long before the expiration of the lease as the term of the hiring itself, not exceeding ~~thirty days~~ one calendar month.
2. In tenancies from month to month, and unless the parties have otherwise agreed in writing to a longer notice period or a different notice time, either party may terminate the tenancy by giving at least ~~thirty days'~~ one calendar month's written notice at any time. The rent is due and payable to and including the date of termination.
3. If a landlord changes the terms of the lease pursuant to section 47-16-07, the tenant may terminate the lease at the end of the month by giving at least twenty-five days' notice.
4. Any agreement that requires a lessee to give notice that exceeds one month from the end of a month to terminate a lease of real property for residential purposes must state the notice requirement and provide space for the lessee to initial next to the notice requirement. If the notice is not initialed by the lessee at the time of executing the lease, the lessee may terminate the lease on the last day of a month with at least one calendar month's notice.
5. Notwithstanding any agreement to the contrary, if a lease converts to a month-to-month tenancy under section 47-16-06 or 47-16-06.1, either party may terminate the lease on the last day of a month with at least one calendar month's notice."

Renumber accordingly

Date: 1-31-07
Roll Call Vote #: /

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1147

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller					
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1147: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1147 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact sections 47-16-06 and 47-16-15 of the North Dakota Century Code, relating to the notice of termination of residential leases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 47-16-06 of the North Dakota Century Code is amended and reenacted as follows:

47-16-06. When a lease is presumed renewed. If a lessee of real property remains in possession thereof of the real property after the expiration of the hiring lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the hiring lease on the same terms and for the same time, not exceeding one year. Except in the case of a lease with an automatic renewal clause, if a lessee of real property for residential purposes remains in possession of the property after the expiration of the lease and the lessor accepts rent from the lessee, the parties are presumed to have renewed the lease as a month-to-month tenancy.

SECTION 2. AMENDMENT. Section 47-16-15 of the North Dakota Century Code is amended and reenacted as follows:

47-16-15. Notice of termination of lease.

1. A hiring lease of real property for a term not specified by the parties is deemed to be renewed as stated in section 47-16-06 at the end of the term implied by law, unless one of the parties gives notice to the other of an intention to terminate the lease, at least as long before the expiration of the lease as the term of the hiring itself, not exceeding ~~thirty days~~ one calendar month.
2. In tenancies from month to month, and unless the parties have otherwise agreed in writing to a longer notice period or a different notice time, either party may terminate the tenancy by giving at least ~~thirty days'~~ one calendar month's written notice at any time. The rent is due and payable to and including the date of termination.
3. If a landlord changes the terms of the lease pursuant to section 47-16-07, the tenant may terminate the lease at the end of the month by giving at least twenty-five days' notice.
4. Any agreement that requires a lessee to give notice that exceeds one month from the end of a month to terminate a lease of real property for residential purposes must state the notice requirement and provide space for the lessee to initial next to the notice requirement. If the notice is not initialed by the lessee at the time of executing the lease, the lessee may terminate the lease on the last day of a month with at least one calendar month's notice.
5. Notwithstanding any agreement to the contrary, if a lease converts to a month-to-month tenancy under section 47-16-06 or 47-16-06.1, either

party may terminate the lease on the last day of a month with at least one calendar month's notice."

Renumber accordingly

2007 SENATE JUDICIARY

HB 1147

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1147

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: February 28, 2007

Recorder Job Number: 4119 & 4123

Committee Clerk Signature

Mark L. Kelly

Minutes: Relating to the notice of termination of residential leases.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Rep. Porter, Dist. #34 introduced the bill at the request of a constituent who ran into the automatic renewal term with his kids in a ND college. He also spoke to the Houses amendments making substantial changes to the original bill.

Tom Blair, Attorney and Father (meter 2:13) Spoke of his personal situation of a child in college and the automatic 60 day renewal in the lease. He spoke of rents being paid and the apartment being rented out to someone else. He discussed other situations brought up in the house of similar nature.

Sen. Fiebiger questioned why the 30 days verses 1 month language (meter 4:17) He could not answer.

Rep. Chris Griffen, Dist. #19 (meter 5:23) Spoke of the reason of "Month" verses "30 days" language. Most "rents" are paid by the month not by the day. Leases start and end by the

month. He referred to section 47-16-06.1 and the automatic renewal clause and land lord notification of automatic renewal clause and how the bill will affect this.

Rocky Gordon, Representing ND Apartment Association (meter 8:28) We are in agreement with all sections except section 5. He spoke of land lords and tenant's rights to negotiate aspects of the rental agreements could be a positive. Mr. Gordon stated that the 60 days gives the tenants more time to look for a new place. This section should be amended out and is already covered in section 2. Sen. Lyson asked him his opinion on the "month" verses "30 days" language. Mr. Gordon replied this is how the current rent process is.

Claus Lemke, ND Assoc. of Realtors (meter 12:00) We agree with the bill. In any other contract all aspects of it our written out, this bill gets rid of all the surprises. In all other parts of the law people have to be told of all changes and need to initial those changes. I have concerns to section 5 also. Agreements in a lease may say 90 days, a lease can still have the 90 days written into the contract-section 5 states ... "Notwithstanding any agreement to the contrary", allowing them to still mislead if they choose to.

Sen. Nelson spoke to (meter 14:55) about another rental issue not pertaining to the bill.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

Job Number: 4123

Senator David Nething, Chairman reopened the hearing.

The committee discussed the billing effecting college kids. They had general discussion of leases and requirements. They spoke to the two proposed amendments. Sen. Olafson did not agree with Mr. Gorden's reference to the redundancy of the bill.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1147

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4886

Committee Clerk Signature

Maria L Solberg

Minutes: Relating to the notice of termination of residential leases.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

The committee reviewed the amendment spoken by Claus Lemke Att. #1 They reviewed the reason for the bill being as a result of college student.

Sen. Fiebiger made the motion to Do Pass Amendment – Att. #1 from today and **Sen. Lyson** seconded the motion. All members were in favor and the motion passes.

Sen. Fiebiger made the motion to Do Pass HB 1147 as amended and **Sen. Marcellais** seconded the motion. All members were in favor and the motion passes.

Carrier: **Sen. Fiebiger**

Senator David Nething, Chairman closed the hearing.


3-12-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1147

Page 2, line 12, replace "Notwithstanding any agreement to the contrary, if" with "If"

Renumber accordingly

Date: 3-12-07

Roll Call Vote # 10 f 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1147

Senate	Judiciary	Committee
--------	-----------	-----------

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass A# #1

Motion Made By Sen. Fiebigler Seconded By Sen. Lyson

[illegible]

Total **Yes** _____ **No** _____

Absent _____

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 3-12-07

Roll Call Vote # 2 of 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1147

Senate	Judiciary	Committee
--------	-----------	-----------

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen. Fiebigler Seconded By Sen. Marcellais

[illegible]

Total Yes 6 No 8

Absent *h*

Floor Assignment Sen. Fiebigler

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1147, as engrossed: Judiciary Committee (Sen. Nethling, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1147 was placed on the Sixth order on the calendar.

Page 2, line 12, replace "Notwithstanding any agreement to the contrary, if" with "If"

Renumber accordingly

1099

2007 TESTIMONY

HB 1147

Tom Bair
Bair, Bair & Garrity, LLP
210 First Avenue NW
P.O. Box 100
Mandan, ND 58554-0100
Phone: 701-663-6568
Fax: 701-663-6951
<<mailto:tbair@bbglaw.net>>

APARTMENT LEASE

Example 1.

13. PROPER NOTICE TO VACATE AND TERMINATE RESIDENCY REQUIRES TWO FULL CALENDAR MONTHS WRITTEN NOTICE PRIOR TO LEASE END BY EITHER RESIDENT OR MANAGEMENT TO THE OTHER PARTY: This notification period will continue will continue to apply even if your lease has expired and you have not renewed your lease. If either Landlord or Resident desires to terminate this lease at the end of the lease term, they may do so by giving the other party written notice of their intent to terminate with a minimum of two (2) months prior to the termination date of your lease. This notice must be received by Noon on or before the last day of the month. Example: Your lease runs from January 1 to December 31, resident's notice to vacate must be received in writing by manager before 12:00 Noon of October 31 to vacate December 31st.

Example 2.

Renewal: Unless either party notifies the other in writing at least two calendar months prior to such ending date, this lease shall be automatically renewed for two calendar month notice period at the prevailing monthly rental rate.

Notice of termination of lease on dwelling unit. Notwithstanding any provision of a lease, a lessee of a dwelling unit may terminate a lease for a month-to-month tenancy ~~on the last day of a month~~ if the lessee gives the lessor at least thirty days' written notice at any time. If less than a thirty-day notice is given by the lessee, the lessor may bill the lessee solely for the actual days the dwelling unit was not leased in the following ~~month~~ thirty days. The lessor may not bill or apply security deposit money for more than thirty days' rent for a month-to-month tenancy. The lessor shall pay treble damages for a violation of this section.