

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2400

2001 SENATE JUDICIARY

SB 2400

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2400

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 12th, 2001

Tape Number	Side A	Side B	Meter #
1		x	55.5-end
2	x		
February 13th, 2001(tape 1)		x	11.7-20.9
February 19th, 2001(tape 1)		x	20.4-43.5
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2400: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 1 OF SECTION 47-16-14 AND SECTION 47-16-15 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO TERMINATION OF LEASES.

Senator Watne, representing district 5, testifies in support of the bill. (testimony attached)

Senator Nelson, What's the problem?

Greg Thompson, attorney at Fargo ND law firm of Anderson & Bottrell. (testimony attached)

Senator Trenbeath, this is interesting. If that is the interpretation as I understand it, the automatic renewal is common practice. What is common practice now?

Greg Thompson, common practice right now is to start on a turn bases. Most common term I see right now is 6 months. This wouldn't be necessary if it was month to month.

Senator Trenbeath, but hasn't it been that the courts have interpreted that if it is paid month to month that it automatically renews itself unless terminated.

Greg Thompson, they have been looking at that as a year lease.

Senator Trayno, if the lease was silent on a renewal, you wouldn't be held. That is what senator Trenbeath is driving at. I think an amendment would be in order.

Greg Thompson, there is a statute that unless a party terminates a contract, it renews itself.

Klaus Rimbkern, represents ND association of Realtors, involved when the bill passed. Landlords were being unfair to college students.

Rocky Gordon, property manager, under current law where you sign six month lease, there is a section where the landlord must notify the tenant.

Senator Traynor, postponed the hearing on SB 2400.

✓ February 13th, 2001 tape 1, side b meter # 11.7

Senator Watne opened the hearing on SB 2400.

Tom Tupa, representing Apartment Association. The group felt that there was no need to amend the bill.

Senator Trenbeath, I don't know why they came to that conclusion.

Tom Tupa, Mr. Thompson carried most of the conversation, he believed the lease would carry from month to month.

Senator Trenbeath, the legal presumption is you do things on purpose. My suggestion is having this redressed in the house.

Senator Bercier, this is a Fargo problem. In my opinion it would seem that the judges should talk.

Tom Tupa, that has been attempted. Mr. Thompson is the so called expert. His fear is that it may spread west.

Senator Watne, one witness did say that this has happened in Grand Forks.

Page 3
Senate Judiciary Committee
Bill/Resolution Number SB 2400
Hearing Date February 13th, 2001

Senator Lyson, I want to call the judge and tell them to get it together or a law will get passed.

Senator Trenbeath, what is the judges reasoning?

Senator Nelson, could you check out on how they are interpreting the law?

February 19th, 2001, tape 1, side b, discussion

Senator Traynor closed the hearing on SB 2400.

SENATOR TRENBEATH MOTIONED TO DO NOT PASS, SECONDED BY SENATOR

BERCIER. VOTE INDICATED 3 YEAS, 4 NAYS AND 0 ABSENT AND NOT VOTING.

SENATOR WATNE MOTIONED TO DO PASS, SECONDED BY SENATOR DEVER.

VOTE INDICATED 4 YEAS, 3 NAYS AND 0 ABSENT AND NOT VOTING.

Date: 2/19/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2400

Senate	Judiciary	Committee
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☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken D. Not Pass

Motion Made By Trenbath Seconded By Bercier

[illegible]

Total (Yes) 5 No 7

Absent

Floor Assignment _____

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

Date: 2/19/61

Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 240

Senate	Judiciary	Committee
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☐ Subcommittee on _____
or _____

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken *D. Pass*

Motion Made By Watne Seconded By Dever

[illegible]

Total (Yes) 4 No 3

Absent

Floor Assignment Watne

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

REPORT OF STANDING COMMITTEE (410)
February 19, 2001 4:50 p.m.

Module No: SR-30-3926
Carrier: Watne
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2400: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2400 was placed on the
Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2400

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2400

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-12-01

Tape Number	Side A	Side B	Meter #
TAPE I		X	734 to 2529
Committee Clerk Signature <i>Joan Dees</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2400. Relating to termination of leases.

Tom Tupa: registered lobbyist for the North Dakota Apartment Association. Spoke in support of the bill.

Rocky Gordon: The intent of this bill is to correct an interpretation problem that we are having in parts of the state. It happens in a fairly narrow scope of situations. In current statute there is three places in the law that it discusses leases. There is a lease for term, month to month and then a combination of lease for term that rolls over into a month to month. The problem that we have been having is that in certain parts of the state, some of the judges are saying that when you enter into a lease for term, that the intent is to turn over into a month to month at the end of the specific term, if no notice is given, the tenant can just leave and they don't have to give a notice. If they don't pay the seventh months rent, then a month to month situation is not created. What we are attempting to do with this bill is to say that the parties may contract within the lease for it to

automatically roll over into a month to month at the end of the term. That is the determination that we have been getting locally, but not in the eastern part of the state.

Senator Watne: District 5, sponsor of the bill, (see attached testimony).

Chairman DeKrey: Are there any questions for either Senator Watne or Mr Gordon. If not thank you appearing, anyone else wishing to appear in support of SB 2400, anyone in opposition to SB 2400.

Rep Mahoney: When you read this (lines 18-21 of page) what happens if they don't contract within the lease for the renewal on a month to month basis.

Rocky Gordon: If it is not contracted within the lease for an automatic renewal are we then talking about a lease for term or do you say nothing changes.

Rep Mahoney: The new law that is being presented in this bill (reads the new language) that means within your lease. What if you don't have anything in your lease. This only provides if you have it within the lease.

Rocky Gordon: I understand what you are saying, I just need to take it one step further. The original lease set up as a lease for term, it was a year lease, is that your question.

Rep Mahoney: Let's use that as an example.

Rocky Gordon: The person stays and pays the next months rent. Then I would see that it would continue on a month to month.

Rep Mahoney: Basically under the old common law.

Rocky Gordon: Yes.

Rep Delmore: Would you see most leases having that provision, as the bill is written.

Rocky Gordon: I would, most are written for a specific term. Most of them are written that they would continue on a month to month basis.

Rep Mahoney: The only concern that I would have is when you put something in statute, it may be interpreted by the courts differently. We may want to take a look at that and that may take some amending to clarify.

Rep Wrangham: I don't understand what this language does. There is nothing in the old law that says they couldn't do that now.

Rocky Gordon: My interpretation of current law is that it does this very thing. It is just that we are trying to clarify when there needs to be an interpretation in the judicial system.

Rep Wrangham: The way I see this, I don't think that you are accomplishing your goal.

Rep Disrud: I see in Senator Watne's testimony that some courts are interpreting this law different. Can you help me understand that a little bit.

Rocky Gordon: What I have been told is that what has happened is that when a lease is entered into that says that we are going to lease this property for six months and that it automatically continues on a month to month bases, which is what was the intent of the parties and how the lease was written. What has been happening in some narrow situations is that at the end of the six months the tenant just leaves and doesn't give notice. The judges are saying that is ok. It is our belief, that the party should be able to say we are going to enter into a six month lease, that turns over into a month to month agreement. The parties would be required to give 30 days notice one way or the other at the end of the six month if they want to leave.

Rep. Disrud: Who is responsible, wouldn't the owner of a piece of property understand that he or she has a six month lease and that the owner is responsible to follow up when the end of the six months to take care of the contract.

Rocky Gordon: What we are trying to say is that which ever party wants to terminate is responsible.

Rep. Disrud: Gives an example with a six month lease. I know that at the end of the six months I am done with my lease and move. I don't understand why I as a tenant would have to say at the end of my six month lease that I am really done or I am not done. I don't understand why I have to clarify when ending a lease.

Rocky Gordon: In the situation where you have just signed a six month lease that would be true. But leases that we're signing say six month and then month to month until someone terminates. I think what you were talking about is somewhat different.

Rep. Onstad: A person signs a six month lease, doesn't the landlord give notification that your lease is coming up what is your intentions.

Rocky Gordon: That is true if you have just signed a six month lease. But if you contract that it is just going to contract after the six month on a month to month basis, then that normally isn't true.

Rep. Onstad: In the same token when it is six month or one month, it just seems to me if you are going on an ongoing month to month, as a landlord you are going to notify the person, what is your intentions next month. If you are going to let it on going, then you left it open for that renter, but that is the landlords notification that let it on going.

Rocky Gordon: No, if you agree that it is going to be on going until someone terminates, be it landlord or tenant, if it is the tenant that wants to terminate, he is the one that needs to give the notice.

Rep Mahoney: Explains the law. If you are trying to take care of a situation where it is not clear, then the real concern is not being addressed in the lease.

Rocky Gordon: I don't think that it is. I wasn't able to communicate what we are trying to do here. I believe that if you sign just a years lease with no other provision, then it is the responsibility of the landlord to try to get a renewal. If at that point he does nothing and the tenant stays and pays the next months rent, then it is a month to month. Then it is the landlords responsibility. But what we are trying to get to is that is not the norm anymore. Most leases that are signed have a fixed term and then it automatically goes to month to month. The tenant should have to give notice to terminate.

Rep Mahoney: Why can't you do that now.

Rocky Gordon: We believe we can, we have been doing it, but in Fargo market, if the tenant just vacates, the judge says that they can do this.

Rep Delmore: You are looking for that tenant to pay that months rent because they left without paying it and letting you know.

Rocky Gordon: What we are looking for is the notice.

Chairman DeKrey: If there are no further questions, we will close the hearing on SB 2400.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2400b

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-14-01

Tape Number	Side A	Side B	Meter #
TAPE I	X		3535 to 4160
Committee Clerk Signature <i>Don Lerner</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2400.

DISCUSSION

Rep Delmore moved a DO NOT PASS, seconded by Rep Disrud.

DISCUSSION

Chairman DeKrey: the clerk will call the roll on a DO NOT PASS motion on SB 2400. The motion passes with a vote of 12 YES, 1 NO and 2 ABSENT. Carrier Rep Wrangham.

Date: 03-14-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2400

House JUDICIARY Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep Delmore Seconded By Rep Disrud

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos		✓			
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 12 No 1

Absent 2

Floor Assignment Rep Wrangham

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

REPORT OF STANDING COMMITTEE (410)
March 14, 2001 10:56 a.m.

Module No: HR-44-5555
Carrier: Wrangham
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SR 2400: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(12 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). SB 2400 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

SB 2400

RE: Testimony on Senate Bill 2400.
February 12, 2001
Senate Judiciary Committee

Mr. Chairman and Members of the Senate Judiciary Committee:

My name is Greg Thompson and I am an attorney with the Fargo law firm of Anderson & Bottrell. This will serve as my written testimony on Senate Bill 2400.

This Bill allows the parties to a written lease agreement for a specified term to renew the provisions of that lease once the lease starts on a month-to-month basis. This Bill may seem unnecessary because many of you believe that the parties to a lease can already contract within the lease for a renewal, but the judges in Cass County have taken a different interpretation. Their position is that once the initial term expires, the parties no longer have a lease. This can cause problems for both the landlord and tenant since both parties previously were governed by a written document and under this interpretation, there no longer is a written document.

If the parties found it in their best interests to be governed by a written document during the initial term, it certainly should also be in their best interest to be governed by the same document once the tenancy starts on a month-to-month basis. That way, the parties have a clear idea of the monthly rent, the security deposit, rules and regulations regarding conduct, number of days to terminate the lease, etc.

The Amendment to Section 47-16-14, subsection (1), is also necessary in order to be consistent with the change to Section 47-16-15.

Thank you for your time and consideration of this Bill.

WMS: L. H. G. Testimony (Bill 2400) 69

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February 13, 2001

Tom Tupa
Executive Director
North Dakota Apartment Association
P.O. Box 2317
Bismarck, ND 58502-2317

VIA FACSIMILE
701-224-9824

RE: Senate Bill 2400

Dear Tom:

To help the Judiciary Committee clarify the questions they had at the hearing on February 12, it will be helpful for them to keep in mind that the Amendment to Section 47-16-15 covers a very narrow fact situation. The Amendment is only intended to cover a situation where the parties to a lease contract initially for a particular term, such as six months and then also agree in the lease that at the end of the six months, the lease will convert to a month-to-month tenancy. The Amendment is not intended to cover any other lease term scenarios.

To help the committee better understand this situation, there are four basic lease term scenarios that occur. They are as follows:

1. The parties contract initially for a particular term such as one year, but the lease is silent on what happens at the end of that year. In this scenario, if the tenant leaves at the end of the year, the lease has automatically terminated. If the tenant holds over, a separate statute says that the lease is presumed to be renewed for another year.

2. The parties initially contract for the lease to simply go on a month-to-month basis. Under this scenario, either party can terminate the lease based upon a termination notice stated in the lease. That would usually be 30, 45 or 60 days. This scenario is already covered by N.D.C.C. §47-16-15.

3. Under this scenario, the parties contract initially for a one year term and then the lease may indicate that the lease will renew for an additional one year term unless terminated pursuant to the lease. Under this scenario, in order for the lease to renew for an additional year, the landlord must give the tenant a notice at least 30 days before the end of the initial term reminding the tenant that the lease will renew for an additional year unless the tenant terminates. This is covered by N.D.C.C. §47-16-06.1.

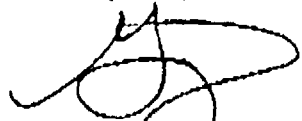
February 13, 2001

Page 2

4. Finally, we have the situation where the parties contract initially for a term such as six months and then in the lease agreement they agree that the lease will convert to a month-to-month tenancy at the end of the initial term. This is the situation where the Cass County judges are indicating that there is no lease at the end of the six month term, despite the language in the lease. Our Amendment to 47-16-15 will allow the parties to convert the existing lease on a month-to-month basis and all of the terms and conditions of the lease will apply.

Tom, these are the four scenarios that the committee should think about as they are reviewing Senate Bill 2400.

Very truly yours,



Gregory L. Thompson
GLT/bms

bms f:\2964\utupa b13ltr

d and Tenant, §§ 220,

or's crop rights in land
of, in absence of such
ter executed, 8 A.L.R.2d

cropper's share in crop
vested as subject to, 82

see — Exception.
the lessor and the
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ection may be altered by
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ll, 795 F.2d 666 (8th Cir.

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is to reserve a title inter-
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ashion. Wild v. Farrell, 50
D.N.D. 1985), aff'd, 795
D. 1986).

aces.
ant = 137-139, 326, 327.
Landlord and Tenant,
Landlord and Tenant, §§ 342,
3. Landlord and Tenant,

year. A lease of real
is no usage on the
nment, unless

re was a lease of premises
f carrying on mercantile
was no evidence of any
respecting the rental of
in the city where the pre-
d. Foster v. National Tea
N.W.2d 760 (1945).

Where lessor placed lessee in possession of the premises as a tenant, while the parties negotiated the final terms of a contemplated long-term lease, and lessee partially performed its duties, even if the trial court determined that the parties did not agree to a long-term lease, lessee had a one-year lease under this section, absent further evidence sufficient to overcome the presumption of a one-year lease. Stonewood Hotel Corp., Inc. v. Davis Dev., Inc., 447 N.W.2d 286 (N.D. 1989).

The presumption in this section controlled where tenant went into possession as a ten-

ant, owner did not sign proposed long-term lease, the parties did not agree that the tenancy was month-to-month, and no evidence of usage was presented. Stonewood Hotel Corp. v. Seven Seas, Inc., 452 N.W.2d 94 (N.D. 1990).

Collateral References.

Landlord and Tenant = 72.
49 Am. Jur. 2d, Landlord and Tenant, § 130.
51C C.J.S. Landlord and Tenant, § 29.

47-16-06. When a lease is presumed renewed. If a lessee of real property remains in possession thereof after the expiration of the hiring and the lessor accepts rent from the lessee, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year.

Source: Civ. C. 1877, § 1118; R.C. 1895, § 4084; R.C. 1899, § 4084; R.C. 1905, § 5531; C.L. 1913, § 6094; R.C. 1943, § 47-1606.

Derivation: Cal. Civ. C., 1945.

Acceptance of Rent.

The acceptance of rent operates as evidence that the landlord consents to the renewal or extension of the contract, and, where the evidence is adequate to establish such consent without a receipt of rent, the receipt or failure to receive the rent is not material. Wadsworth v. Owens, 21 N.D. 255, 130 N.W. 932 (1911).

Change in Written Contract.

A change in a written contract of lease relating to the furnishing of seed and crop division did not alter the nature or break the continuity of a holding so as to terminate a year to year hold-over tenancy. Timm v. Arvidson, 58 N.D. 634, 227 N.W. 59 (1929).

Continuation of Written Contract.

If the lessee remains in possession after the expiration of the hiring and the lessor accepts rent from him, the parties are presumed to have renewed the hirings on the same terms and for the same time, not exceeding one year, and the rights of the parties are governed by the provisions of the contract which had expired. Herrmann v. Minnesota Elevator Co., 57 N.D. 235, 145 N.W. 821 (1914), overruled on other grounds Minneapolis Iron Store Co. v. Branum, 36 N.D. 355, 162 N.W. 543 (1917); Timm v. Arvidson, 58 N.D. 634, 227 N.W. 59 (1929).

Where tenant retained possession of farm after the expiration of the original term of the

lease, the written farming contract or lease executed in 1940 continued in force as a document to be considered in determination of what arrangements landlord had with tenant in 1956 to 1958 for qualifying the landlord for old-age benefits. Celebrezze v. Benson, 314 F.2d 219 (8th Cir. 1963), aff'g, Benson v. Ribicoff, 201 F. Supp. 189 (D.N.D. 1962).

Disputable Presumption.

The presumption raised by this section is disputable and where it appeared that the lessor and the lessee were dissatisfied with the conditions of the lease and for some time had been conducting negotiations for a new lease, the evidence disputed the presumption of extension or renewal. Foster v. National Tea Co., 74 N.D. 37, 19 N.W.2d 760 (1945).

This section only raises a disputable presumption that the lease was renewed on the same terms. Willman v. Harty Co., 305 N.W.2d 909 (N.D. 1981), overruled on other grounds, Shark v. Thompson, 373 N.W.2d 859 (N.D. 1985).

Implied Tenancy Is a New Tenancy.

A mortgage given to secure the prompt payment of rent according to the terms of a written lease does not secure rents which become due after the expiration of the lease and under a tenancy arising by implication of law. Field v. Mott, 9 N.D. 621, 84 N.W. 555 (1900).

Collateral References.

Landlord and Tenant = 89½-91, 114(3), 200(9).
49 Am. Jur. 2d, Landlord and Tenant, §§ 352-358.

51C C.J.S. Landlord and Tenant, §§ 72-78, 136; 52 C.J.S. Landlord and Tenant, § 505.

Landlord's consent to extension or renewal of lease as shown by acceptance of rent from tenant holding over, 45 A.L.R.2d 827.

Binding effect on tenant holding over of covenants in expired lease, 49 A.L.R.2d 480.

Options: holding over under lease, or renewal or extension thereof, as extending time for exercise of option to purchase contained therein, 15 A.L.R.3d 470.

Sublessee's rights with respect to primary lessee's option to renew lease, 39 A.L.R.4th 824.

47-16-06.1. Automatic renewal of leases of residential real property — When notice required. Notwithstanding the provisions of section 47-16-06, in any lease of a specified term of two months or more of real property used for residential purposes, the lessor may not enforce an automatic renewal clause of a lease unless the lessor has notified the lessee in writing, delivered personally or by first-class mail, of the automatic renewal provision not less than thirty days prior to the expiration date of the current lease. If such notice has not been given, the lease expires, and the terms of the latest lease convert to a month-to-month tenancy.

Source: S.L. 1991, ch. 487, § 1.

47-16-07. Leases — Notice by landlord to change terms — When effective. In all leases of land or tenements, or of any interest therein, from month to month, the landlord may change the terms of the lease to take effect at the expiration of the month upon giving notice in writing at least thirty days before the expiration of the month. The notice, when served upon the tenant, shall operate and be effectual to create and establish as a part of the lease the terms, rent, and conditions specified in the notice, if the tenant shall continue to hold the premises after the expiration of the month. For the purpose of this section, notice may be served in any reasonable manner which actually informs the tenant of the changes in the terms of the lease.

Source: Civ. C. 1877, § 261; R.C. 1895, § 3368; R.C. 1899, § 3368; R.C. 1905, § 4804; C.L. 1913, § 5347; R.C. 1943, § 47-1607; S.L. 1970, ch. 486, § 1.

Derivation: Cal. Civ. C., 827.

Collateral References.

Landlord and Tenant § 33, 200.9.

51C C.J.S. Landlord and Tenant, § 229; 52 C.J.S. Landlord and Tenant, § 506.

Notice: inclusion or exclusion of first and last days in computing time for giving notice of termination of lease which must be given a certain number of days before a known future date, 98 A.L.R.2d 1432.

Application to commercial lease of rule that lease may be canceled only for "material" breach, 54 A.L.R.4th 595.

47-16-07.1. Real property and dwelling security deposits — Limitations and requirements.

1. The lessor of real property or a dwelling who requires money as a security deposit, however denominated, shall deposit the money in a federally insured interest-bearing savings or passbook account established solely for security deposits. The security deposit and any interest accruing on the deposit must be paid to the lessee upon termination of a lease, subject to the conditions of subsection 2. A

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 - c. The cost of the dwelling
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3. A lessor is withheld
4. Upon a trial the security grantee or liability of the grantee dwelling even though security d
5. This section state that security d

Source: S.L. 1977 487, § 1; 1983, ch. 1; 1989, ch. 553, §

Deposit Withheld
The determination of fact and will be clearly erroneous. N.W.2d 611 (N.D. 1991)
Trial court's conclusion reasonably withheld consent to tenant

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act of neglect, 10

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Landlord and Tenant, §§ 221-
52 C.J.S. Landlord and

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1386

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potential market value.
In Restaurants, Inc., 459
(90).

cases.
Landlord and Tenant, §§ 49, 217-228, 230.

49 Am. Jur. 2d, Landlord and Tenant,
§§ 215 et seq., 320.

51C C.J.S. Landlord and Tenant, § 250; 52
C.J.S. Landlord and Tenant, §§ 552-571; 52A
C.J.S. Landlord and Tenant, §§ 729-751.

Liquidated sum for failure to vacate pre-
mises or surrender possession at expiration of
lease, validity and construction of lease pro-
vision requiring lessee to pay, 23 A.L.R.2d
1318.

Advance rental payments made under lease
terms, right of lessor to retain upon lessee's
default in rent, 27 A.L.R.2d 656.

Measure of damages for tenant's failure to
surrender possession, 32 A.L.R.2d 582.

Forcible detainer or similar possessory ac-
tion, right of landlord who has conveyed prop-
erty to third person to maintain, 47 A.L.R.2d
1170.

Executor or administrator, power to recover
rent under existing lease, 95 A.L.R.2d 277.

Dispossess tenant without legal process,
right of landlord legally entitled to possession
to, 6 A.L.R.3d 177.

47-16-13.5. Mitigation of damages. Any party aggrieved under
sections 47-16-13.1 through 47-16-13.6 may recover appropriate damages.
However, the aggrieved party has a duty to mitigate damages.

Source: S.L. 1977, ch. 429, § 5.

Collateral References.

Landlord and Tenant, §§ 48(2), 49(2),
124(3), 132(3), 133(3), 154(4), 180(4, 5), 232,
286.

49 Am. Jur. 2d, Landlord and Tenant,
§§ 322, 585, 848, 874, 890.

51C C.J.S. Landlord and Tenant, §§ 247(2),
250(2), 301, 320, 322, 373(5); 52 C.J.S. Land-

lord and Tenant, §§ 461(2), 568; 52A C.J.S.
Landlord and Tenant, § 750.

Landlord's duty, on tenant's failure to oc-
cupy, or abandonment of, premises, to miti-
gate damages by accepting or procuring an-
other tenant, 21 A.L.R.3d 534.

**47-16-13.6. Enforcement of sections 47-16-13.1 through 47-16-
13.6.** Any right or action provided by sections 47-16-13.1 through 47-16-13.6
is enforceable by action and the court may award reasonable attorney's fees
to the prevailing party.

Source: S.L. 1977, ch. 429, § 6.

Collateral References.

Lease provision relating to attorneys' fees,
construction and effect of, 77 A.L.R.2d 735.

Amount of attorneys' compensation in mat-
ters involving real estate, 58 A.L.R.3d 1336.

**47-16-13.7. Eviction — Lessee liable for rent during term of
lease.** A lessee evicted according to law is liable for rent during the
remainder of the term of the lease. However, this section does not relieve the
landlord of the duty to mitigate damages.

Source: S.L. 1993, ch. 319, § 2.

47-16-14. When a lease of real property terminates. The leasing
of real property terminates:

1. At the end of the term agreed upon;
2. By the mutual consent of the parties;
3. By the lessee's acquiring title to the property leased superior to that
of the lessor; or
4. By the destruction of the property leased.

Source: Civ. C. 1877, § 1111; R.C. 1895, § 4077; R.C. 1899, § 4077; R.C. 1905, § 5524; C.L. 1913, § 6087; R.C. 1943, § 47-1614.

Derivation: Cal. Civ. C., 1933.

Expiration of Term.

A lease is terminated by the expiration of the term of the tenancy as fixed by the lease without notice to either party. *Wilson v. Divide County*, 76 N.W.2d 896 (N.D. 1956).

Intent to Surrender Premises.

That business for which the premises had been leased had been terminated, that lessee's fixtures had all been sold to other parties, that on the date he left the keys to the premises in the cash register drawer, the lessee had no other property in the store, and that lessee had no further use for the premises, all persuasively indicate that lessee intended to surrender the leased premises. *Sanden v. Hanson*, 201 N.W.2d 404 (N.D. 1972).

Mutual Consent.

Mutual consent of the parties may be express or implied from the conduct of the parties. A lease may be terminated or surrendered either by express agreement or by operation of law, whereby the surrender results from acts of the parties to the lease which imply mutual consent to the termination. *Sanden v. Hanson*, 201 N.W.2d 404 (N.D. 1972).

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

Source: Civ. C. 1877, § 1119; R.C. 1895, § 4085; R.C. 1899, § 4085; R.C. 1905, § 5532; C.L. 1913, § 6095; R.C. 1943, § 47-1615; S.L. 1963, ch. 318, § 1; 1970, ch. 486, § 2; 1985, ch. 507, § 2.

Derivation: Cal. Civ. C., 1946.

Federally Subsidized Housing.

Although either party to a lease of real

Purchase by Lessee.

Although lessors may have invalidly granted an easement in gross to the United States during the term of the lease, the rights of the lessees under the lease terminated by their purchase of the property and their title is subject to the easement granted by the prior owners. *United States v. Albrecht*, 496 F.2d 906 (8th Cir. 1974).

Collateral References.

Landlord and Tenant ⇐ 93-97, 101, 116, 120.

49 Am. Jur. 2d, Landlord and Tenant, §§ 215-219, 281-288.

51C C.J.S. Landlord and Tenant, §§ 89-95, 99, 138, 139, 149, 152, 154, 167, 182.

Lease giving landlord percentage of lessee's profits or receipts, termination, 38 A.L.R.2d 1118.

Condition of premises within contemplation of provision of lease or statute for termination of lease in event of destruction of or damage to property as result of fire, calamity, the elements, act of God, or the like, 61 A.L.R.2d 1445.

Fire: condition of premises within contemplation of provision of lease or statute for termination of lease in event of destruction of, or damage to, property as result of fire, 61 A.L.R.2d 1445.

Calculation of rental under commercial percentage lease, 58 A.L.R.3d 384.

estate property can normally terminate a month-to-month tenancy with proper notice under this section, federal regulations place additional burdens on owners of subsidized projects. *Community Homes of Bismarck, Inc. v. Quast*, 510 N.W.2d 648 (N.D. 1994).

Written Notice Required.

Written notice to terminate is required whether the lease is oral, or written. *United*

Accounts, Inc. v. N.W.2d 115 (N.D.

Collateral Reference.
Inclusion or exclusion in computing termination of lease with

47-16-16.
property may
of the term as

1. Uses of the agreement
2. Does not reason

Source: Civ. C. 1877, § 4075; R.C. 1899, § 4075; C.L. 1913, § 608

47-16-17.
property may

1. When a reason in the good condition
2. When and value induced any condition

Source: Civ. C. 1877, § 4076; R.C. 1899, § 4076; C.L. 1913, § 608; 1983, ch. 82, § 1

47-16-18.
Only when the parties to death or income

Source: Civ. C. 1877, § 4078; R.C. 1899, § 4078; C.L. 1913, § 608

Derivation: Cal. Civ. C., 1946.

47-16-19.
rent. The rent has been made for the rent. The

Memo

To: Senator Lyson

From: Judge Frank L. Racek


Date: February 14, 2001

RE: Senate Bill 2400

You called yesterday with an inquiry concerning Senate Bill 2400 which involves an amendment to N. D. C. C. § 47-16-15 relative to termination of leases. I met with our judges this morning.

The only scenario that we can think of that we have come across concerning notice is the situation where a landlord requires a sixty day notice before a lease can be terminated. There may at times be an issue when a tenant vacates a property and does not give a full sixty days notice. For example: a landlord has a six month lease with a person that is to end December 31st, and requires a sixty day notice to terminate. The tenant gives notice that he will be leaving on December 31st, but the notice is not provided until November 15th. The issue then may become whether there was rent due for January after the original lease had terminated and after the tenant had moved from the property.

Each case that comes before the Court is unique, and each is decided on its own merits. The Court usually has to interpret the terms of the lease involved in the particular case, and sometimes the leases are not as exact as they could be. Resolution of such cases normally rests on the Court's interpretation of the language of the lease, and not any particular statute.



If you believed that an amendment is in order perhaps the following language would be more appropriate:

The parties may contract within the lease for the renewal of the lease at the end of the term, and all of the provisions of the lease remain in effect.

The additional words of "on a month-to-month basis" and "subject to modification of the parties at the commencement of the month-to-month tenancy" may create more unresolved legal issues in particular cases.

I hope this response is helpful in your deliberations. If you have any additional questions, please feel free to contact any of us.

FLR:tam



NORTH DAKOTA SENATE

Senator Darlene Watne
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BISMARCK, ND 58505-0360

COMMITTEES:
Judiciary, Vice Chairman
Political Subdivisions

Chairman DeKroy and Members of the House Judiciary:

Have you ever noticed Realtors' ads or business cards with letters behind their names? You will see CRS, GRI, RMM and others. These indicate passage of intensive courses, classes, in real estate knowledge. We are under continuing education programs to keep these certifications.

CRS is a Certified Residential Specialist, GRI is a Graduate of the Real Estate Institute, and RMM is a Real Estate Marketing Master.

I hold these three designations. In every one of these classes I was taught by the experts that when parties negotiate a lease on a property, often for a year, at the end of that lease it automatically keeps going on a month-to-month basis with the same terms unless one of the parties steps up and gives a 30-day notice of a change. That notice could be a notice that the renter is moving out, it could be that the owner evicts. Any other changes to that lease would have to be negotiated by the parties. If you read the present law in this bill, this seems a logical interpretation.

Suddenly we are having some courts, particularly in the Fargo area, interpret this differently, and this is giving some problems to Realtors and property managers. Some courts are finding that once the initial term expires, the parties no longer have a lease. This would mean that every lease would have to be re-signed at the end of a term.

The North Dakota Apartment Association, the Executive Officer of the North Dakota Realtors, and the property managers all believe the wording in this bill will solve the problem. The bill simply states what the law already is, as set out in another part of the Code too, and fortifies the intent of the law, so hopefully all of the courts will interpret the law henceforth the same way.

In our Judiciary meeting the question was asked why one of these groups didn't take it to the Supreme Court for a decision. Since these cases are usually for small amounts, it is highly doubtful any of them would be taken to the Supreme Court to solve the question through that avenue. The parties involved believe THIS BILL is the solution.

The bill fortifies the present law. I urge a DO PASS.

Respectfully,

Darlene Watne