

2009 HOUSE JUDICIARY

HB 1393

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1393

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 7968, 7977

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1393.

Rep. Jim Kasper: Sponsor, support (I'm here on HB 1393, HB 1404, and HB 1387). These bills were introduced at the request of property owners in Fargo. Many times these rental properties are damaged by the tenants. They go to small claims court to try to recover damages. Sometimes the referees are uneducated or not skilled at these types of cases and then the plaintiff cannot recoup their losses if they are ruled against. At that point, they cannot appeal that decision to the district court or ask for a new referee. I ask for your favorable action on this bill.

Rep. Griffin: What is really changing except that it is moving an event from a class A misdemeanor for a \$2,000 level to a \$1,000 level.

Rep. Kasper: It does what it does. The people behind me will testify as to why we want it changed. I will leave that up to them.

Chairman DeKrey: Thank you. Further testimony in support.

Mike Eisert, Fargo citizen and property owner: Support. We have people fill out an application, sign a lease that says that they have to give a 30 day written notice to vacate the premises. We have a check-in list and they are to go through the apartment and check off

anything that isn't in good condition so that they would have a record of it when they move out. When they move out, we go through the property and use a check out sheet. There were 11 windows broken out, paneling in the basement where they put up a dartboard, and there were several hundreds of holes around the board, put their fists through the doors, kicked the refrigerator, plugged up the bathroom tub until the water was sitting there a foot deep and black with mold, as well as wrecked ceiling tiles. Then they moved out. We took them to small claims court and they counterclaimed that the damages were extremely high and not realistic. Out of our \$5,000 claim we were awarded \$2265.00 because the referee didn't have the requisite knowledge to rule on our claim. The referee didn't keep order in the proceeding, she let all three defendants talk over us and out of turn. Then they asserted that there was mold in the property, the referee asked me about it. I had no knowledge of it at all, because the tenants had never reported any problems to me as the landlord.

Rep. Klemin: You said they filed a countersuit against you.

Mike Eisert: A countersuit against me in small claims court because they said the damages amount was extravagant.

Rep. Klemin: So that was their answer.

Mike Eisert: Yes.

Rep. Klemin: But they didn't claim that you owed them anything.

Mike Eisert: No, they thought the \$5,000 was extravagant because you can pick up a door for \$15 at Menards.

Rep. Dahl: Your situation is unfortunate, but under this bill, the provision proposed in the bill wouldn't really help you, would it. Your situation would have already been covered since it was over \$2,000.

Mike Eisert: No, because the law says now that if you rent to a person and they wreck your property, you can take them to small claims court. You can be awarded the judgment, and then good luck trying to collect it; because there are no teeth in the bill. I have judgments on people for \$4,000 that I will never see, because they move from job to job, one state to another. We to change the bill so that if the amount of damage is over \$1,000 there is a penalty of a class A misdemeanor. There has to be accountability. If you wreck something you should be held responsible to pay for it.

Rep. Griffin: Did you file a police report.

Mike Eisert: Yes.

Rep. Griffin: Was the state's attorney unwilling to prosecute.

Mike Eisert: They were. They didn't want to file because they felt it was a civil matter.

Rep. Griffin: I would point to section 1, subsection 1, section b. Under this section, I would think that there would be an action that can be prosecuted as a criminal matter.

Mike Eisert: The problem is that you are in a civil situation, there aren't any teeth to a civil action. I think the tenants should be held responsible, and not have their parent come in and pay while they are smiling at me, taunting me.

Rep. Klemin: How is this going to change anything in the situation you described as far as the criminal law is concerned. It seems to be already covered in existing law. We're not sure how the addition would change anything. The state's attorney would still have the power to charge this out or not. How do you suggest that we bypass the state's attorney in prosecuting the crimes.

Mike Eisert: I'm just expressing my concern. When I'm on the road and get a speeding ticket, I have to pay it, or else I might lose my license. If someone wrecks your property they should have to pay or suffer the consequences. Common sense would tell me that.

Rep. Dahl: In the landlord/tenant section of our Code, is there a limit on the amount you can collect for a deposit.

Mike Eisert: Yes, one month's rent.

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

Aaron Birst, ND Association of Counties: The state's attorneys are in opposition to this bill. We think that the law is already clear on this and we don't see how this bill will shed any more light on this. State's attorneys are, generally, reluctant to charge these types of crimes, but I do know that they do get charged.

Rep. Boehning: What can you do to protect the landlords out there from tenants damaging their property.

Aaron Birst: I understand the frustration. I don't know that the criminal justice system is the appropriate venue, the threat of jail may not work. You won't get your money back if they are in jail.

Rep. Boehning: If someone writes a bad check, they go to jail for that and some of those cases aren't for that large a sum.

Aaron Birst: I understand, the only difference is that an ongoing tenant/landlord relationship there is always the ability to build into it a cost of doing business. You can always build in some extra payments, as far as raising the rent to deal with these kinds of lawsuits. A lot of people don't feel that writing bad checks should be prosecuted either.

Rep. Klemin: What kind of remedy does a person have then if they file a criminal complaint and the state's attorney says I'm not going to prosecute that for whatever reason, do they have anything else they can do on the criminal side.

Aaron Birst: Under the current criminal statutes, if the state's attorney does not charge the case, there is the right to actually ask the judge to remove the state's attorney; that would only

be in an extraordinary remedy. If the states' attorney is not doing their job, there is a potential that the district court could step in. I believe, at that point, they do move it to the AG.

Rep. Klemin: When you say remove them, do you mean remove them from office.

Aaron Birst: No, just from that particular case. That would be an extraordinary action. I can't remember the last time that happened.

Rep. Klemin: That doesn't sound like a very adequate remedy then.

Aaron Birst: No.

Rep. Koppelman: This is a troubling issue. If the states' attorneys are not willing to prosecute these cases, how do we as a legislature deal with this when it is already in law that it is a crime.

Aaron Birst: I completely agree that the intentional destruction of property is a serious matter and should be prosecuted. The problem is criminal vs. civil. In a criminal case you have to prove it beyond a reasonable doubt. On the civil side there is a much easier standard, just a preponderance of the evidence is needed to prove it.

Rep. Koppelman: When you're looking at another type of property damage, say somebody wrecks a restroom in a restaurant, can you prove beyond a reasonable doubt that this person used the restroom, or the one that used it before or after him. It's the same kind of thing. You know that a tenant is living in your property and it sustains damage, you know who did it and they should be responsible for their actions and those of their guests.

Aaron Birst: I am sympathetic and if this committee is of the opinion that they want us to take a real serious look at these, I think we can do it in a different way, than adopting this bill. I can take this back to my people as well and have them take a look at this. The extreme cases are taken care of. In my opinion, the system is working quite well. But there are cases where the

outcomes didn't work as he would have wanted. Putting them in jail isn't going to get restitution for the landlord.

Rep. Koppelman: I would suspect that under current law, or under this modified statute if it were to pass, if you had someone that you believed was guilty, and as you said serving jail time doesn't serve any purpose, I assume you as the state prosecutor would ask for a suspended sentence, or brief jail time and restitution would be a factor in that sentence; I think that would be a powerful club hanging over someone's head to say that I have to pay this back or I'm going to jail.

Aaron Birst: I understand what you're saying. Under current law, a misdemeanor can compromise the process. To threaten jail isn't good; there is a concept in law that really frowns upon a prosecutor threatening prosecution, there are a number of Supreme Court cases where that has happened. There is a very fine line.

Chairman DeKrey: How much training does a referee get before they hear cases.

Aaron Birst: They are law trained, there are a few cases where they are 3rd year law student. In the case we heard about, the landlord did get some money for damages, just not as much as he wanted.

Chairman DeKrey: Thank you. Further testimony in opposition.

Rep. Wolf: Who is Connie, she is listed on the least.

Mike Eisert: She was the mother of TJ.

Rep. Wolf: She wrote the check to write off the debt.

Mike Eisert: Yes.

Rep. Wolf: You wanted the entire ceiling tile replaced.

Mike Eisert: I couldn't find that tile anymore.

Rep. Wolf: You wanted the entire knotty pine paneling replaced.

Mike Eisert: That was 63 linear feet. We only asked to have the damaged paneling replaced.

Rep. Klemin: Did you have an insurance policy that covered this property.

Mike Eisert: Yes.

Rep. Klemin: Did you file an insurance claim.

Mike Eisert: No.

Rep. Klemin: Why not.

Mike Eisert: My understanding of filing claims with the insurance company is if you want to file a claim, we have a \$1000 deductible, and if you have 3 claims in a short period of time, your insurance can be dropped. I don't want to file unless the loss is major or a fire.

Rep. Klemin: But you had a \$7,000 claim.

Mike Eisert: Yes. Someone should be accountable to pay for this, not my insurance. The police said it was a civil matter, not a criminal matter.

Rep. Klemin: Have you had prior experience with this same referee in small claims court.

Mike Eisert: Yes, this referee has had so many complaints made against them.

Rep. Klemin: Why didn't you just file in district court instead of small claims court.

Mike Eisert: I'm a small business owner, just myself and my wife. I don't have hundreds of units. I could live with \$5,000 to fix up the place and take a loss of the other \$2,000. But then I was only awarded the smaller amount, and then it was too late. You can't appeal from Small Claims Court to district court. You're done. I was shocked that she gave me so little when I had pictures of everything that was damaged.

Rep. Klemin: Knowing all that kind of history, why didn't you just go to district court.

Mike Eisert: Maybe next time we will have to do that.

Rep. Klemin: Then you have a right to appeal from the district court.

Mike Eisert: Typically when I have gone to small claims court, most of the time it's a simple matter because there hasn't been a lot of damage. Like if someone didn't pay the rent. The law should protect the landlords too.

Rep. Delmore: Was the security deposit part of your settlement, or did you also get to keep the security deposit.

Mike Eisert: Yes, we kept the security deposit. We couldn't rent the place. When we went in there it was a mess and everything was damaged. It took almost 30 days to get it back up and running, so we kept the deposit just to pay for our mortgage payment for that month. We're only making about \$150/mo. above and beyond what our mortgage, insurance, and taxes are. This set us back about five years. There should be some teeth in the law. The banking institutions charge a lot of money for bad checks and get their pound of flesh.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.
----- (OPENED LATER IN THE AFTERNOON)---

Chairman DeKrey: We will take a look at HB 1393. What are the committee's wishes.

Rep. Delmore: I move a Do Not Pass.

Rep. Wolf: Second.

11 YES 1 NO 1 ABSENT

DO NOT PASS

CARRIER: Rep. Griffin

Date: 1/28/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1393

HOUSE JUDICIARY COMMITTEE

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Legislative Council Amendment Number _____

Action Taken ☐ DP ☒ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 1

Absent 1

Floor Carrier: Rep. Griffin

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

REPORT OF STANDING COMMITTEE (410)
January 28, 2009 12:11 p.m.

Module No: HR-17-1074
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1393: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1393 was placed on the
Eleventh order on the calendar.