

Testimony of Richard LeMay
In Support of HB 1440
Before the House Industry, Business and Labor Committee
February 2, 2021

Chairman Mike Lefor and Committee Members: My name is Richard LeMay. I serve as the Executive Director of Legal Services of North Dakota (LSND), a nonprofit organization that provides civil legal services to low-income individuals and economically disadvantaged elderly North Dakotans statewide.

Federal funding through Legal Services Corporation together with foundation grant funds allows LSND to provide immediate legal assistance through a central intake and senior legal help line. Those individuals needing extended services are transferred to one of LSND's regional law offices where North Dakotans are helped with legal problems including but not limited to consumer, housing, family law, advance directives, social security, medicare, medicaid, and income maintenance to name just a few.

Currently, NDCC § 47-16-20 - provides "When there is no contract or usage to the contrary," rent is paid at the end of the month. Too many landlords have taken contrary to the extreme. It is common for leases to require fees to be paid prior to the rent. Fees can include late charges, pet waste fees, fees for any number of self created infractions for which the tenant is assessed charges, penalties, or fines.

The following scenario is far too familiar to LSND. A typical low-income tenant is assessed an additional fee on top of their monthly rent. The specific fee is not relevant. It is an additional charge to the tenant above and beyond rent. The tenant only has the amount of the rent to pay the landlord. The landlord takes the tenants payment and applies it first to the tenant's

outstanding charge or fee. Consequently, the rent is not paid in full and the tenant is now in peril of eviction. The landlord chooses not to evict the tenant but assesses another late fee on the tenant. The next month the tenant comes up with the entire rent and enough extra to pay the first unpaid fee. But the landlord applied the tenants rent payment first to the unpaid fee. Again the tenant's rent is not fully paid and the landlord again assesses another late fee. The third month, the tenant again pays the entire rent and one of the outstanding fee amounts. For the third month the landlord applies the tenant's rent payment first to the outstanding unpaid fees so the rent is not fully paid again. The landlord again assesses another late payment fee on the tenant. The tenant becomes angry with the landlord because given the tenant's income and other household expenses, the tenant is not able to catchup. The landlord takes offense to the tenant's questioning of his accounting practices and takes action to evict the tenant. Under this scenario the landlord alleges the basis for eviction is nonpayment of rent which under normal circumstances the tenant has no defense. More than likely the landlord will obtain an order for eviction and a judgment for unpaid rent and for rent owed under the term of the lease. Without an attorney the tenant receives little to no due process.

The purpose behind HB1440 is to require a landlord to apply any payment made by the tenant to rent first. Generally, courts disfavor the use of late fees as penalties and will seldom evict tenants for unpaid fees if the rent is otherwise paid. Passing this bill will protect tenants from being evicted for nonpayment of fees, fines or penalties assessed by the landlord.

I would ask for your support for HB 1440. Thank you for your consideration and I will try to answer any questions you may have.