

The Predicament of the Accidental Landlord

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The recent lawsuit over the eviction of Michael Rotondo attracted national and international news coverage. Rotondo is a 30-year-old whose parents had to sue to get him to move out of a bedroom in their home – prompting criticism of Rotondo for freeloading on his parents.

Rotondo's case illustrates the predicament facing unintentional landlords – property owners who provide a living space to family members or friends without intending to create a formal landlord-tenant relationship. The problem is that, whether the property owner intends to become a landlord or not, when they share their dwelling they can inadvertently create a landlord-tenant relationship in the eyes of the law, giving rise to unanticipated responsibilities and liabilities. As long as the parties get along, an informal relationship can work out fine, but, as Michael Rotondo's parents found out the hard way, when conflict develops, the absence of a rental agreement can create a real headache for the unintentional landlord.

Commercial landlords document their landlord-tenant relationships in written leases and factor the price of potentially evicting tenants into the monthly rent. When the landlord is careful to comply with the law, the cost of a simple eviction proceeding is often low since factual support will be lacking for legally meritorious defenses such as allegations that the premises were not livable (the "covenant of habitability"); waiver by acceptance of rent; retaliation; or improper notice. Things are not always so easy for those who do not document their relationships with a time-tested contract.

Chapter 504B of the Minnesota Statutes, and the state's common law on landlord-tenant relationships, contains a number of "traps for the unwary" that can create broad defenses in eviction cases, especially where the landlord has not formalized the terms of the legal relationship.

A tenant determined to fight an eviction who is not subject to a written lease is often able to delay the proceedings by insisting upon judicial review or even by forcing a trial. The results of these proceedings can be very frustrating for landlords. Sometimes, a tenant delaying eviction is able to come up with enough money to exercise the legal right to "cure" the non-payment of rent by paying the entire past-due amount. The result is that a landlord might incur legal fees, suffer the stress of a trial, and even win an order for eviction – only to be forced to continue living with an unwanted tenant until after giving new notice to quit the premises at the next opportunity for termination.

It can be awkward to ask a family member or friend to sign a lease when they are moving in, but it is worth the trouble to consult with a lawyer to help ensure that everything goes smoothly. When an accidental landlord and an unintended tenant disagree about a move-out date or some other key

factor in the tenancy, the two parties often seem to remember the terms of their verbal lease quite differently, and each will often have a different interpretation of text messages, emails, or other written records that have less formality than a legal contract.

Accidental landlords do not think they are landlords, but if they blindly assume that a judge will see things their way, they are taking a serious risk. Michael Rotondo's parents probably did not think they would ever need to go to court for an eviction when they let their 30-year-old son live in their spare bedroom. Letting a friend or loved one temporarily live in a home is a generous act – but the wise may temper their altruism with a dose of prudence before making a copy of the keys.

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