

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1440

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1440
2/2/2021

Rents & priority of payments under a rental agreement.

(10:05) Chairman Lefor opens the hearing on HB 1440.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Late rental fees.
- Eviction.

Rep Mary Schneider~District 21 in favor. Attachments #4916, 4851 & 4852.

Kelly Gorz~Associated Director of High Plains Fair Housing Center. Attachment #4913.

Kristina Sombor~ND Coalition for Homeless People. Attachment #4867.

Richard LeMay~Executive Director-Legal Services of ND. Attachment #4755.

Jeremy Petron~ND Apartment Association. Attachment #4931.

Chairman Lefor closes the hearing.

Additional written testimony: Attachments #4561, 4579, 4662, 4717, 4743, 4766, 4776, 4780, 4807, 4818, 4820 & 4844.

(11:13) End time.

Ellen LeTang, Committee Clerk

Committee on Industry, Business and Labor

Representative Mike Lefor, Chairman

Testimony Introducing HB1440—Payment of Rent

By

Rep. Mary Schneider, District 21

February 2, 2021

Good morning, Chairman Lefor, and members of the Industry, Business and Labor Committee. I'm Representative Mary Schneider from District 21, the Heart of Fargo, and I'm here to introduce HB 1440.

This two-paragraph little bill would simply require that when a residential tenant makes a rent payment to a landlord, it is credited to the payment of rent. If the tenant owes other charges or late fees, the rent check would be first applied to rent, not applied to late fees or other tenant obligations. If the payment covers more than the rent due, it can be applied to whatever else is owed. No problem. If the tenant directs that it be applied to other obligations besides rent, that's fine, too.

So why does it matter that rent paid be first applied to rent owed and not to other charges? Simply put, one of the eight grounds for eviction allowed by North Dakota law is if the renter "fails to pay rent for three days after the rent is due." If a landlord applies a rent check to late fees or other charges first, the landlord creates a deficiency not intended by the renter and gives the appearance that a sum of rent has not been paid, allowing for eviction. This bill, by requiring a rent payment to be applied first to rent would help stabilize housing and prevent unwarranted evictions and possible homelessness for North Dakotans and their families.

Is it unusual to pass such a law? Not at all. Other states and the District of Columbia provide language that accomplishes this, largely to avoid the personal, economic, and legal consequences to tenants.

North Carolina's language, for example, is succinct: "A late fee for a specific late rental payment shall not be deducted from a subsequent rental payment so as to cause the subsequent rental payment to be in default."

Wisconsin put their prohibition in Administrative Code: "Before charging a late rent fee or late rent penalty to a tenant, a landlord shall apply all rent prepayments received from that tenant to offset the amount of rent owed by the tenant."

Our nation's capital just says in its code, "A housing provider shall not deduct any amount of a late fee from a subsequent rent payment."

There are good reasons for implementing this language. Eviction actions and sometimes resulting homelessness can result in spiraling into poverty from court costs and attorney fees, the many expenses with moving and establishing a new household, and the expense of new deposits associated with housing and utilities. Homeless children with interrupted schooling can suffer lifelong setbacks that end up costing the state significant money for special educational needs, mental health needs and behavioral issues. Stable housing is in everyone's interest, and it's in the interests of our state and its communities to prevent unnecessary evictions.

These have been particularly trying times for renters. COVID lay-offs have dropped many middle-income renters into poverty, causing them to delay payments and accumulate late fees. Evictions have exploded and homelessness has the additional effects of exposing families to the virus and spreading it.

This small change in the law could have far-reaching positive effects with minimal consequences to landlords. Late fees and other charges can still be collected through traditional collection means, or through small claims court, up to \$15,000. And this doesn't change any of the grounds for eviction. In a time when it's most needed this is a positive change, and I hope you will support it.



EVICTIION FOR TENANTS

An Informational Guide to a North Dakota Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota state courts. The information provided in this informational guide is not intended for legal advice but only as a general guide to a civil court process.

If you decide to represent yourself, you will need to do additional research to prepare.

When you represent yourself, you must abide by the following:

- State or federal laws that apply to your case;
- Case law, also called court opinions, that applies to your case; and
- Court rules that apply to your case, which may include:
 - North Dakota Rules of Civil Procedure;
 - North Dakota Rules of Court;
 - North Dakota Rules of Evidence;
 - North Dakota Administrative Rules and Orders;
 - Any local court rules.

Links to the laws, case law, and court rules can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov by clicking on the “Self Help” link.

When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures. If you are unsure if this information suits your circumstances, consult a lawyer.

This information is not a complete statement of the law. This covers basic information about the process of eviction in a North Dakota State District Court from a tenant’s perspective. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state of North Dakota. Use at your own risk.

WARNING – EVICTION CAN HAVE SERIOUS LEGAL AND FINANCIAL CONSEQUENCES.

It is strongly recommended that you consult a lawyer as early as possible in the eviction process, and carefully consider all of your options before you represent yourself in an eviction action.

When you represent yourself, you are held to the same requirements and responsibilities as a lawyer, even if you don’t understand the rules or procedures.

IMPORTANT! REQUIREMENTS THAT MUST BE FOLLOWED IN ORDER TO EVICT:

- See Page 10 for the requirements of serving the Notice of Intent to Evict.
- See Page 15 for when a landlord **MUST** be represented by a lawyer.
- See Page 16 for the requirements of serving the Summons and Complaint.

If the requirements are not followed, the eviction case does not automatically stop.
However, at the eviction hearing, the tenant can present evidence of how the requirements were not followed and ask for the eviction case to be dismissed.

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SECTION ONE: INFORMATION ABOUT EVICTION IN NORTH DAKOTA

What is an Eviction?

In North Dakota, a landlord may evict a tenant for one or more of the eight grounds (reasons) for eviction allowed by North Dakota law.

Eviction is an accelerated, or sped up, civil legal action to determine the right to possess the property. North Dakota eviction law strictly limits the ability to combine eviction with other claims related to the lease agreement.

What are the Eight Grounds (Reasons) for Eviction?

A landlord may evict a tenant for one or more of the eight grounds (reasons) for eviction. ([North Dakota Century Code Section 47-32-01](#)) The most common grounds are in **bold**.

The eight grounds (reasons) for eviction are:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.
2. A party, after peaceably entering upon real property, turns out by force, threats, or menacing conduct the party in possession.
3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the possession was acquired peaceably or otherwise.
4. **A lessee, in person or by subtenant, holds over after the termination of the lease or expiration of the lessee's term, or fails to pay rent for three days after the rent is due.**
5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity in the real estate.
6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a district court.
7. **A lessee or a person on the premises with the lessee's consent acts in a manner that unreasonably disturbs other tenants' peaceful enjoyment of the premises.**
8. **The lessee violates a material term of the written lease agreement between the lessor and lessee.**

CAUTION Repairs and Non-Payment of Rent

Tenants must pay the rent on time according to their verbal or written lease. There is no defense for non-payment of rent, even when repairs became necessary and the landlord did not make the repairs in a reasonable amount of time.

However, if a ground (reason) for the eviction is non-payment of rent and the tenant made the repairs and deducted the amount from the rent, the tenant may challenge the amount of rent the landlord claims is past due.

Who are the Parties in an Eviction?

Plaintiff – The person who leased the property to another; a landlord.

If the property is owned by an individual, the Plaintiff is the individual. If the property is owned by a legal entity, such as a corporation or limited liability company, the Plaintiff is the legal entity.

Defendant – The person who rents or holds the lease to a property; a tenant.

What are the Definitions of Some Commonly Used Terms in an Eviction?

Attorney's Fees – the amount an attorney charges a client to represent them in a court case. Attorney's fees may be awarded as costs to a successful plaintiff if there is an enforceable agreement between the plaintiff and defendant. Written leases sometimes include an agreement that, if evicted, the tenant will pay attorney's fees. (See also, Costs.)

Complaint – an eviction complaint is a written, legal document that is served with the eviction summons. The complaint states the grounds (reasons) for the eviction, the basic facts of the eviction, and identifies the action the landlord is asking the court to take.

Costs – generally refers to expenses and fees for going to court. For example, costs may include filing fees, charges for serving legal documents, and making copies of papers and exhibits. If the court orders the eviction, the plaintiff is usually awarded costs. (See also, Attorney's Fees.)

Damages – money paid by defendants to successful plaintiffs in civil cases to compensate the plaintiffs for their injuries. In an eviction, damages are limited to rents or profits that are past due, and damages caused by the tenant's possession of the property. Landlords cannot request an award of future rent when bringing an eviction.

Forcible Detainer – a civil, legal process that is used to evict a tenant in North Dakota. It is an accelerated, or sped up, civil legal action to determine the right to possess the property.

Lease – a contract by which one gives to another the temporary possession and use of real property for reward and the latter agrees to return such possession to the former at a future time.

Lessor – the person who leases a property to another; a landlord.

Lessee – the person who rents or holds the lease to a property; a tenant.

Lien – a right given to another by the owner of specific property to secure a debt, or one created by law in favor of certain creditors.

Real Property – real or immovable land including anything that is affixed to the land that is incidental or immovable by law.

Personal Property – anything that is not real property.

Summons – an eviction summons is a written, legal notice that comes with the eviction complaint. The summons notifies the tenant that an eviction action has been filed with the District Court, and includes the date, time and location of the eviction hearing.

Writ of Execution – an order from the Judge or Judicial Referee needed to give possession of the property back to the landlord. (The writ may also be referred to as a Writ of Execution for Possession, a Writ of Restitution, or a Writ of Eviction.) A writ of execution cannot be issued until after the court orders an eviction.

What are North Dakota Laws and Rules Related to Eviction?

Chapter 23-11 of the North Dakota Century Code

<http://www.legis.nd.gov/cencode/t23c11.html> governs housing authorities.

Chapter 47-16 of the North Dakota Century Code

<http://www.legis.nd.gov/cencode/t47c16.html> governs leases.

Chapter 47-32 of the North Dakota Century Code

<http://www.legis.nd.gov/cencode/t47c32.html> governs evictions.

Rule 4 of the North Dakota Rules of Civil Procedure <https://www.ndcourts.gov/legal-resources/rules/ndrcivp/4> governs how documents in evictions must be served (delivered) to tenants.

Rule 6 of the North Dakota Rules of Civil Procedure <https://www.ndcourts.gov/legal-resources/rules/ndrcivp/6> governs how to calculate the time for certain events and deadlines during eviction.

The North Dakota Rules of Civil Procedure apply to civil matters in North Dakota district courts. The rules are available at <https://www.ndcourts.gov/legal-resources/rules/ndrcivp>.

The North Dakota Rules of Court apply to civil matters in North Dakota district courts. The rules are available at <https://www.ndcourts.gov/legal-resources/rules/ndrct>.

The North Dakota Rules of Evidence apply to civil matters in North Dakota district courts. The rules are available at <https://www.ndcourts.gov/legal-resources/rules/ndrev>.

North Dakota Case Law (Court Opinions) related to eviction is found at www.ndcourts.gov. Click on the “Supreme Court” link, the “Docket Search” link, and then use the drop down menu to find the topics that correspond to Landlord/Tenant Law.

When the decision of a case is appealed from a North Dakota State District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.

Laws constantly change through legislation, administrative rulings and case law (court decisions). To determine how a law applies to your situation, review the applicable law or laws, administrative rules and rulings, and case law (court decisions). Notes of case law (court decisions) related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

Other Tenant Resources and Contacts

Legal Services of North Dakota publishes a Landlord Tenant Law brochure. The brochure contains useful information about landlord/tenant rights and responsibilities. You may find the answer to your question in the brochure. The brochure is found online at www.legalassist.org by clicking on the “Education Materials” link.

The North Dakota Office of the Attorney General publishes consumer resources. One consumer resource is a Tenant Rights brochure. You may find the answer to your question in the brochure. The brochure is found online at <https://attorneygeneral.nd.gov/consumer-resources>.

HUD Housing Complaint Line: 1-800-669-9777

Fair Housing and Enforcement Center: 1-800-877-7353

ND Department of Labor - Human Rights Division: 1-800-582-8032;

<https://www.nd.gov/labor/>

Community Action Partnership (Emergency rental assistance money - call for availability)

Bismarck, 701-258-2240 Devils Lake, 701-662-6500 Dickinson, 701-227-0131

Fargo, 701-232-2452 Grand Forks, 701-746-5431 Jamestown, 701-252-1821

Minot, 701-839-7221 Williston, 701-572-8191

Vulnerable Adult Protective Services (VAPS)

The North Dakota Legislature passed the Vulnerable Adult Protective Service Law in 1989. The law authorized the Department of Human Services to develop, administer, and implement a program of protective services for vulnerable adults. A vulnerable adult is any person older than age 18, or emancipated by marriage, that has a substantial mental or functional impairment.

Any person who reasonably believes that a vulnerable adult has been subjected to abuse or neglect or observes conditions or circumstances that reasonably would result in abuse or neglect may report the information to the department or to an appropriate law enforcement agency.

Report online at <http://www.nd.gov/dhs/services/adultsaging/vulnerable.html> or call toll-free 1-855-GO2LINK (1-855-462-5465).

Attorney Resources and Limited Legal Representation

You are not required to hire an attorney to bring a civil action in a North Dakota State District Court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that an attorney is required to follow.

Attorney Resources

Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is www.legalassist.org.

The State Bar Association of North Dakota provides a lawyer referral service to match paying clients in need of legal services with attorneys. The phone number is (866) 450-9579 and the website is www.sband.org. The cost is \$30.00 for a 30 minute consultation with an attorney.

For a list of all attorneys who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at www.ndcourts.gov/Lawyers. You can narrow your search by name or location.

Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that an attorney can help you with part of your case while you do the rest of your case. You pay for the part of the case the attorney handled. For example:

- You may want an attorney to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with an attorney to prepare or review your legal documents, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with an attorney who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire an attorney just to make court appearances for you.

You and the attorney must agree in writing to Limited Legal Representation.

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SECTION TWO: THE EVICTION PROCESS IN NORTH DAKOTA

An Overview of the Eviction Process

- Step One: 3 Day Notice of Intention to Evict**
Required for some grounds (reasons). Not an eviction order.
- Step Two: Service of Eviction Summons and Complaint**
Starts District Court eviction process to obtain an eviction order.
- Step Three: Prepare for the Eviction Hearing**
Gather information, documents, etc. to tell your side of the eviction.
- Step Four: Attend the Eviction Hearing**
Your opportunity to tell your side/request more time to move out.
- Step Five: After the Eviction Hearing**

The eviction process moves quickly! If you have questions about your rights and responsibilities, contact a lawyer as soon as possible. Legal Services of North Dakota may represent you for free if you meet certain criteria. Submit an application as soon as possible because it takes time for a form to be reviewed and eligibility to be determined. (See the **Attorney Resources** section above for the website and phone number.)

STEP ONE IN AN EVICTION: 3 Day Notice of Intention to Evict

***Warning* DO NOT ignore the 3 day notice of intention to evict.**

What is a 3-day notice of intention to evict:

For some grounds (reasons) for eviction, before the landlord can start the eviction process in North Dakota district court, the landlord is required to serve (deliver) a 3-day notice of intention to evict to you.

A 3-day notice of intention to evict is a document that gives you notice the landlord intends to evict you. The notice may be a letter, or may be a clearly labeled legal document.

The 3-day notice of intention to evict is not an eviction order. Eviction requires a North Dakota District Court order.

When is a 3-day notice of intention to evict required to be served (delivered) to the tenant:

A 3-day notice of intention to evict is required to be served (delivered) to you when one of the eight grounds (reasons) for eviction includes:

- 4) A lessee, in person or by subtenant, holds over after the termination of the lease or expiration of the lessee's term, or fails to pay rent for three days after the rent is due.
- 5) A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity in the real estate.
- 6) A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a district court.
- 8) The lessee violates a material term of the written lease agreement between the lessor and lessee.

The landlord is not required to serve (deliver) a 3-day notice of intention to evict to you when the ground (reason) for eviction does not include one of the grounds listed above.

What must be included in the 3 day notice of intention to evict:

The 3 day notice of intention to evict must state the grounds (reasons) for eviction.

Past-Due Rent: If rent is past-due, the amount of past-due rent is included in the 3 day notice of intention to evict. The only amounts that can be claimed are the rent amounts that are past due. A landlord cannot include any other amounts, i.e. utilities, other costs (unless these items are included in the rent amount). If the landlord has claimed any other amounts other than the rent in the 3 day notice of intention to evict, or included rent that is not due, this may become a defense in your eviction.

Late Fees: if your lease says that as additional rent you pay a late fee if the rent is paid late, the late fees may be included in the 3-day notice of intention to evict.

If a ground (reason) for eviction includes failure to pay the rent for three days after rent is due, the 3 day notice of intention to evict must provide the opportunity for the tenant to pay the past-due rent before the end of the 3 day deadline.

When can a 3 day notice of intention to evict be served (delivered) to a tenant:

Failure to pay rent: When ground (reason) four, failure to pay rent, applies, the 3-day notice can be served after the rent is three days past the due date. A landlord must wait until after you are three days late with the rent.

Violation of material term of written lease agreement: When ground (reason) eight applies, the 3-day notice can be served after you violate a material term of the written lease.

How is a 3-day notice of intention to evict served (delivered):

When the tenant can be found, there are two ways the landlord can arrange for service of the notice of intention to evict to you.

- Personal Service by a Sheriff:

A landlord may arrange for the sheriff of the county to personally serve the 3-day notice of intention to evict to you.

In other words, the 3-day notice of intention to evict is personally delivered by the sheriff of the county to you or a person of suitable age and discretion in your household.

- Personal Service by a Person 18 years or older:

A landlord may arrange for person who is at least 18 years of age and not a party to or interested in the eviction action to personally serve the 3-day notice of intention to evict to you.

In other words, the 3-day notice of intention to evict is personally delivered by a person who is at least 18 years of age and not a party to or interested in the case to you or a person of suitable age and discretion in the your household.

At least one attempt must be made to serve the 3-day notice of intention to evict on you using either of the two methods above. An attempt must be made between the hours of six p.m. and ten p.m.

When a tenant CANNOT be found, and after at least one attempt to serve the 3-day notice of intention to evict using either of the two methods above, the sheriff of the county or a process server may post the notice in a conspicuous place at the leased premises, i.e., tape it to the front door.

Incorrect service of the 3-day notice of intention to evict does not automatically stop the eviction process. However, you may dispute service of the notice with your landlord. If the landlord continues the eviction process, you may present your side to the court at your eviction hearing. (See “If the tenant disputes the 3-day notice of intention to evict” below.)

Calculating the deadline of a 3 day notice of intention to evict:

Review [Rule 6 of the North Dakota Rules of Civil Procedure](#) carefully! When a law doesn't specifically say how to calculate time, Rule 6 applies.

When calculating days:

- Do not include the day of the event that triggers the start of the period;
- Count by calendar days, including Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

If you dispute the deadline in a 3 day notice of intention to evict, notify your landlord. If the landlord continues the eviction process, you may present your side to the court at your eviction hearing. (See "If the tenant disputes the 3-day notice of intention to evict" below.)

Tenant payments during the 3-day notice of intention to evict period:

Full payment of rent and late fees:

If the reason for the 3-day notice of intention to evict is non-payment or late payment of rent, you may pay the full amount of rent and late fees, if any, within the 3-day notice deadline.

If you pay the full amount listed within the 3-day notice of intention to evict deadline, the landlord must accept the payment and cannot continue with the eviction process to evict you for non-payment or late payment of rent.

Partial payment of rent and late fees:

If you attempt to make a partial payment, the landlord does not have to accept it. Some landlords may agree to accept partial payments or a payment plan for the outstanding amount (per a written agreement).

If the tenant disputes the 3-day notice of intention to evict:

Do not delay! If you dispute the information in the 3-day notice of intention to evict, inform the landlord in writing. Be specific.

For example:

- A landlord must wait until you are late with the rent. If there is a written lease, consult the lease to verify the due date of the rent.
- Repair expenses made by you may be deducted from the rent in certain circumstances.

- A landlord cannot include any other amounts, i.e. utilities, or other costs (unless these items are included in the rent amount).
- The notice of intention to evict was not served correctly. (See “How is a 3-day notice of intention to evict served (delivered)” above.)

Make a copy of the letter for your records. Deliver the letter to the landlord in a way that shows actual delivery.

By having a copy of the letter and proof of delivery, if the landlord moves forward with the eviction you can bring this documentation with you to the court hearing.

Begin gathering documentation:

If the landlord moves forward with the eviction (see Step Two) you will need to prepare to present your side of the eviction to the North Dakota District Court. Begin preparing by gathering documentation that you believe will prove your side.

For example:

- The lease agreement (original and renewals).
- Documentation of your rent payments.
- List of witnesses.
- If you dispute the amount of past-due rent due to repair expenses:
 - Receipts for work and material if you made repairs yourself.
 - Records of apartment and building problems, including problems with heat, hot water, and all other repairs and services.
 - Photos – labeled by date and description.
 - List of dates that you spoke with the landlord, maintenance, or building staff about problems with your apartment/housing.

STEP TWO IN AN EVICTION: Service of Eviction Summons and Complaint

What happens if a tenant does not leave after receiving the 3-day notice of intention to evict?

When you receive a 3-day notice of intention to evict and do not comply, the landlord may start the North Dakota district court eviction process. The North Dakota district court eviction process starts with service of the Eviction Summons and Complaint on the tenant.

IMPORTANT! The eviction process moves very quickly once the Eviction Summons and Complaint are served!

If the property is part of a legal entity, such as a business, a corporation or a limited liability company, the landlord CANNOT represent the legal entity in the eviction UNLESS the landlord is a lawyer licensed to practice in North Dakota.

ONLY a lawyer licensed to practice in North Dakota can represent a legal entity in an eviction. Non-lawyers are not allowed to represent legal entities in evictions.

(See [Wetzel v. Schlenvogt](#), 2005 ND 190; and [State ex rel. Department of Labor v. Riemers](#), 2008 ND 191.)

A non-lawyer's signature on an eviction summons and complaint may not automatically stop the eviction process. At your eviction hearing, you may present evidence that the property is owned by a legal entity and a non-lawyer signed the eviction summons and complaint on behalf of the legal entity.

The North Dakota Secretary of State website offers a registered business database. The database is free to search by business name. Go to sos.nd.gov/business/business-services/business-records-search.

Every lawyer licensed to practice in North Dakota is searchable by name at www.ndcourts.gov/lawyers.

What is an Eviction Summons?

An Eviction Summons is a written, legal notice that comes with the Eviction Complaint. The Eviction Summons notifies you, the defendant, that an eviction action has begun.

The Eviction Summons contains the date, time and location of the eviction hearing in a North Dakota district court. You, the defendant, are required to appear in person at the eviction hearing and answer the complaint.

An example of an Eviction Summons is found online at www.ndcourts.gov/legal-self-help by clicking on the "Eviction for Landlords" link in the "Landlords and Tenants" section.

What is an Eviction Complaint?

An Eviction Complaint is a legal document that:

- Identifies the parties in the eviction – Plaintiff (Landlord) vs Defendant (Tenant);
- States the grounds (reasons) for eviction;
- States the basic facts of the eviction; and
- Identifies the action the landlord is asking the court to take and any other relief the landlord wants the court to grant.

The Eviction Complaint is served with the Eviction Summons.

An example of an Eviction Complaint is found online at www.ndcourts.gov/legal-self-help by clicking on the “Eviction for Landlords” link in the “Landlords and Tenants” section.

NOTE: If the property is part of a legal entity, such as a corporation or limited liability company, non-lawyers are generally not allowed to represent legal entities in a North Dakota state district court. Court documents signed by non-lawyer agents of a legal entity may be considered void.

How are an Eviction Summons and Complaint served (delivered)?

There are two ways a landlord may arrange for service of a copy of the summons and complaint on you. The timeline for service depends on the way the copy of the summons and complaint are served.

- **In person service on the tenant(s).**

The sheriff of the county may serve the Eviction Summons and Complaint personally on you or a person of suitable age and discretion in your household.

A person who is at least 18 years of age and not a party to or interested in the eviction action may serve the Eviction Summons and Complaint personally on you or a person of suitable age and discretion in your household.

- **If the person cannot be found in the county,** the following conditions apply to service:

- Proof that the sheriff or process server attempted service, and that service was attempted at least once between the hours of six p.m. and ten p.m.
- An affidavit must be filed by the landlord or the landlord’s attorney that states:
 - The tenant cannot be found, or the tenant is not in this state.
 - A copy of the eviction summons has been mailed to the tenant at the tenant's last-known address if any is known to the landlord.
- Then, service of the Eviction Summons may be made upon you by the sheriff or process server posting the summons upon the door of the residential unit.

- **Timelines for services of the summons and complaint on the tenant(s):**

If the tenant was personally served a copy of the summons and complaint within the county, service must be completed at least three days before the time set for the eviction hearing.

Otherwise, service must be completed at least seven days before the time set for the eviction hearing.

Incorrect service of the summons and complaint does not automatically stop the eviction process. However, you may dispute service of the summons and complaint when you present your side to the court at your eviction hearing.

A Judicial Referee May Hear and Decide the Eviction:

[Rule 13 of the North Dakota Supreme Court Administrative Rules](#) allows eviction cases to be heard and decided by a Judicial Referee, rather than a District Court Judge.

If a Judicial Referee is assigned to the eviction case, any party to the case may request that a District Court Judge hear and decide the case instead. The party must file a written request with the Clerk of Court within seven days after service of the notice of hearing.

STEP THREE IN AN EVICTION: Prepare for the Eviction Hearing

Circle and note the date of your eviction hearing on your summons and complaint. If you do not attend the hearing, the Judge or Judicial Referee may rule against you and evict you.

The Eviction Summons and Complaint includes the date, time and location of the eviction hearing. The eviction hearing will be between three and fifteen calendar days from the date the Eviction Summons was issued.

The eviction hearing is your only opportunity to tell the court your side of the eviction. Even if you do not dispute the grounds (reasons) for the eviction, you may ask the court to allow you up to 5 additional days to move out.

If you need special assistance at the hearing:

If you have a disability, do not read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

Review pre-trial or trial guidebooks for self-represented individuals and lawyers:

Preparing for an eviction hearing is often a complex and confusing process. Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

Continue gathering documentation:

Since the landlord moved forward with the eviction, you will need to prepare to present your side of the eviction to the North Dakota District Court at the eviction hearing. If you received a 3-day notice of intention to evict, you may have already begun to gather documentation.

Continue preparing for the eviction hearing by gathering documentation that you believe will prove your side.

For examples of documentation, see “Begin gathering documentation” in Section Two, above.

Finish your eviction hearing preparations:

Review the North Dakota Rules of Evidence carefully! The North Dakota Rules of Evidence govern whether your evidence is admitted at the hearing. The Rules also govern how you object to evidence the landlord wants to admit at trial.

An Evidence Research Guide is available at www.ndcourts.gov/legal-self-help by clicking on the “Evidence” link in the “District Court Civil” section.

Review Rule 45 of the North Dakota Rules of Civil Procedure carefully! If you require a witness to appear at the hearing or require production of documents, electronically stored information or other tangible things, you may need the Clerk of District Court to issue a subpoena. Only a Clerk of District Court or a lawyer for a party may issue a subpoena.

A Subpoena Informational Guide is available at www.ndcourts.gov/legal-self-help by clicking on the “Subpoenas” link in the “District Court Civil” section.

Organize the information, documents, etc. that you think you will need for the hearing. At minimum, prepare an outline of your remarks and arguments.

Prepare a contingency plan:

If the Judge or Judicial Referee decides in the landlord’s favor, you will be evicted the same day as the court hearing unless you claim hardship, in which case the Judge or Judicial Referee can give you up to five days to move out.

This means that if your court date is Tuesday, October 19, 2017, the Judge or Judicial Referee may evict you on Tuesday, October 19, 2017.

Before you go to the eviction hearing, prepare some contingency plans. For example, find a relative to stay with or find an emergency homeless shelter. You also need to have a plan for your belongings, such as a storage facility.

The North Dakota homeless shelter directory is available at <https://www.homelessshelterdirectory.org/northdakota.html>

Warning Many of the shelters have waiting lists. Contact the shelter before going there.

STEP FOUR IN AN EVICTION: Attend the Eviction Hearing

The eviction hearing is an examination of the facts and law, presided over by the Judge or Judicial Referee. The landlord and tenant each have an opportunity to tell their side of the facts of the eviction and argue how the eviction laws apply to the situation. The Judge or Judicial Referee weighs the facts and arguments presented by the landlord and tenant and either grants or dismisses the eviction.

The eviction hearing is your only opportunity to tell the court your side of the eviction. Even if you do not dispute the grounds (reasons) for the eviction, you may ask the court to allow you up to 5 days to move out.

Contact information for Clerks of District Court by County:

Contact information for Clerks of District Court by county is available at www.ndcourts.gov.

If you need special assistance at the hearing:

If you have a disability, do not read or understand English well, or require special accommodations in the courtroom, contact the Clerk of District Court's office as soon as possible.

Do not be late!

Do not be late for your eviction hearing. If you have a serious, unavoidable reason why you cannot go to the eviction hearing on the scheduled day or will be late, call the Clerk of District Court's office as soon as possible.

Be aware that even if you contact the Clerk of District Court's office, the Judge or Judicial Referee may decide to hold the eviction hearing without you.

Bring the information, documents, etc. that you prepared for the hearing:

Bring all of the files, paperwork, etc. that you gathered and organized while preparing for the eviction hearing. Bring the outline of what you want to say.

Conduct of the hearing:

In general, an eviction hearing proceeds in the following order:

Before the hearing officially begins:

- Organize your files and paperwork on your assigned table in the courtroom so you can easily locate information as needed.

- The landlord or the landlord's attorney may give you copies of their documents before the hearing starts.

The eviction hearing officially begins when all are asked to rise when the Judge or Judicial Referee comes into the courtroom:

- The Judge or Judicial Referee begins the eviction hearing by identifying any documents that were submitted to the court clerk and identifying the names of the parties.
- The landlord or the landlord's attorney may give you copies of their documents, if copies were not given to you before the hearing began.

Opening statements:

- Often, each side gives an opening statement. An opening statement describes the issues in the eviction and states what the party expects to prove during the hearing.
- Usually, the plaintiff goes first and the defendant goes last.

The Plaintiff presents his or her case first:

- The landlord or, if represented, the landlord's attorney presents the landlord's case first.
- Individuals with first-hand knowledge of the facts of the eviction, such as the landlord, property manager, managing agent, or site manager, are called to testify as a witness. Each witness sits in the stand and is sworn in.
- The landlord or, if represented, the landlord's attorney asks each witness questions to present evidence of the facts of the eviction to the court. For example:
 - Who they are and how they know the tenant;
 - The location of the property;
 - Identification of the documents the plaintiff wants the court to allow as evidence, such as: the lease and payment ledger;
 - Rent amount, amount of rent owed; and
 - Anything else that pertains to why the eviction action was brought.
- If you object to the questions or evidence being presented, you may object when the question is asked, or when evidence is presented. The North Dakota Rules of Evidence govern how you object to evidence.

You have the option to cross-examine the plaintiff's witnesses:

- After the landlord or, if represented, the landlord's attorney finishes direct questioning of a witness, you have a chance to ask the witness questions. This is called cross-examination.
- **You can only ask questions about the topics covered during the plaintiff's direct questioning of their witness.**
- If you do not have any questions, the Judge or Judicial Referee will allow the witness to go back to their seat.

You present your case:

- After the landlord or, if represented, the landlord's attorney finishes presenting their case, you present the evidence of your side of the facts of the eviction. You may testify on your own behalf.
- You may call individuals with first-hand knowledge of your side of the facts of the eviction, to testify as your witness. Each witness sits in the stand and is sworn in.
- You ask each witness questions to present evidence of the facts of the eviction to the court. The North Dakota Rules of Evidence govern how you present evidence.
- If the plaintiff objects to the questions or evidence you present, the plaintiff may object when the question is asked, or when evidence is presented.

The Plaintiff has the option to cross-examine your witnesses:

- After you finish direct questioning of your witness, the landlord or, if represented, the landlord's attorney has a chance to ask your witness questions. This is called cross-examination.
- **The plaintiff can only ask questions about the topics covered during your direct questioning of your witness.**
- If the plaintiff does not have any questions, the Judge or Judicial Referee will allow the witness to go back to their seat.

Closing arguments:

- Often, each side gives a closing argument. A closing argument is a summary of the evidence presented at the hearing and an argument to the Judge or Judicial Referee on how the case should be decided.
 - Remember, you may request up to five (5) days to move out.

- Usually, the plaintiff goes first and the defendant goes last.

The Judge or Judicial Referee will then either order the eviction or dismiss the case:

- The Judge or Judicial Referee gives a summary of the documents entered into evidence and the testimony from everyone who testified.
- If the Judge or Judicial Referee orders the eviction, you will be given a date of eviction. You and all of your belongings must be moved out on that date.
 - If the case is complicated, a Judge or Judicial Referee may decide to reserve judgment. This means that the Judge or Judicial Referee will mail their decision about the case.
- The plaintiff can ask for a money judgment, which may include: outstanding rent, fees associated with the service of notice of eviction and service of summons and complaint, late charges, and attorney's fees.

Important Before you leave the courtroom:

Before you leave the courtroom, make sure you understand what happens next. Ask if you are not sure.

Review of a Judicial Referee's Findings and Order:

If the eviction case is heard and decided by a Judicial Referee, the Judicial Referee will issue findings of fact and an order. The Judicial Referee's findings of fact and order have the same effect as the findings of fact and order of a District Court Judge until superseded by a written order of a District Court Judge.

If any party to the eviction case wants a review of the Judicial Referee's findings of fact and order, the party must file a written request for a review, stating the specific reasons for the review, with the Clerk of Court within seven days after service of notice of the right to review.

The party requesting review must give notice of their request to all other parties. Any party who wishes to respond to the request for review must file their written response within fourteen days after service of the notice of the request for review.

STEP FIVE IN AN EVICTION: After the Eviction Hearing

If you are evicted, you must move out by the date in the eviction order:

If the Judge or Judicial Referee orders the eviction, the eviction order will state the date you must leave the property. If you did not make contingency plans before the eviction hearing, you may wish to review the contingency plan information in Step Three of this informational guide.

If you do not move out before the date of eviction, the Writ of Execution goes into effect. The Sheriff or the Sheriff's staff will come and escort you off the premises.

For example: if your eviction hearing is Tuesday, November 28 and the Judge or Judicial Referee orders your eviction on Thursday, November 30, you have 2 days to move out. If you do not move out, law enforcement will come on Thursday, November 30, to escort you and your property from the premises.

Important Only the Sheriff or the Sheriff's staff can evict you from the property!

Tenant responsible for rent during the term of the lease:

You are still responsible for the remainder of your lease even if you are evicted. But, the landlord must make an effort to find someone to take over the rest of your lease.

(See [Section 47-16-13.7 of the North Dakota Century Code](#).)

Security deposits:

You may not receive your security deposit back. The Judge or Judicial Referee may apply this amount to any outstanding fees awarded to the landlord as part of the eviction.

If the Judge or Judicial Referee does not apply the security deposit to outstanding fees awarded to the landlord as part of the eviction, the landlord is permitted to use the security deposit toward the following:

- Damage to the premises caused by the tenant or their pet, or due to the negligence of the tenant or their guest;
- Unpaid rent;
- Cost of cleaning or other repairs the tenant is responsible for to return the unit to its original state, except for reasonable wear and tear.

If the landlord uses all or part of the security deposit, the landlord must provide a written description/itemized list of damages and charges. The itemized statement must be sent to the tenant at the last address they provided, and must include the amount of the refund or any amount due to the landlord.

A landlord who, without justification, withholds any portion of a security deposit is liable for triple the amount withheld.

NOTE: The landlord is required to put your security deposit in an interest bearing or checking account. If you occupied the property for 9 months or more, you are also entitled to the amount of interest that accrued on the original security deposit amount.

(See [Section 47-16-07.1 of the North Dakota Century Code.](#))

Abandoned property – Less than \$2,500:

If, after you move out, you leave your personal property for 28 days or longer, your personal property is considered abandoned. If the total estimated value of your abandoned personal property is less than \$2500.00, the landlord may dispose of or sell your personal property without giving you any notice.

Before an eviction, the landlord can do the following with the proceeds from selling your abandoned property:

- Keep all the money;
- Recover security deposit;
- Reimburse the storage fees for storing your abandoned property.

After an eviction, the landlord can do the following with the proceeds from selling your abandoned property:

- Put a lien on your items for reasonable costs associated with storing and removing your abandoned property.
- Retain possession of your property until charges (court associated fees and eviction money judgment) have been paid off.

(See [Section 47-16-30.1 of the North Dakota Century Code.](#))

Other ways the eviction judgment against you can be enforced:

The eviction judgment may impact your credit score or ability to lease in the future:

- North Dakota District Court eviction judgments are publically available. This may impact your credit score and have a negative impact on renting in the future.

If the landlord was awarded money as part of the eviction order, the landlord may use judgment collection options to collect the money. For example:

- Formal Discovery to Identify your Assets:
 - A landlord may use the same types of discovery options available during civil actions, such as interrogatories (written questions) and production of documents, to find assets that may be available to pay the judgment.
- Garnishment:
 - A judgment collection option where the landlord tries to obtain funds which are your property, but are held by a third party, such as an employer. If you are working, garnishment allows the landlord to take a percentage of your paycheck to pay the money the eviction order says you owe.
- Lien Against Real Property:
 - If you own real property (real estate) in North Dakota, the landlord may file the judgment in the county where the real property is located. The judgment is a lien against the property that may be satisfied if the property is sold.
- Renew the Judgment for Another 10 Years:
 - Money awarded in an eviction order is collectable for 10 years. 90 days before the eviction order expires, if the money awarded has not been collected, the landlord may renew the order for another 10 years.

This North Dakota Legal Self Help Center resource was created by Melissa L. Cosby, as part of the University of North Dakota School of Law Externship Program, Fall 2017.



STATE OF NORTH DAKOTA COURTS

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Eviction for Tenants

Overview of Eviction

Eviction is an accelerated, or sped up, civil legal action to determine the right to possess the property. The eviction legal action takes place in North Dakota state district court.

North Dakota eviction law strictly limits the ability to combine eviction with other claims related to the lease agreement.

In North Dakota, a landlord may evict a tenant for one or more of the eight grounds (reasons) for eviction allowed by North Dakota law.

The eight grounds (reasons) for eviction are:

1. A party, by force, intimidation, fraud, or stealth, has entered upon the prior actual possession of real property of another and detains the same.
2. A party, after peaceably entering upon real property, turns out by force, threats, or menacing conduct the party in possession.
3. A party, by force or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the possession was acquired peaceably or otherwise.
4. A lessee, in person or by subtenant, holds over after the termination of the lease or expiration of the lessee's term, or fails to pay rent for three days after the rent is due.
5. A party continues in possession after a sale of the real property under mortgage, execution, order, or any judicial process and after the expiration of the time fixed by law for redemption, or after the execution and delivery of a deed, or after the cancellation and termination of any contract for deed, bond for deed, or other instrument for the future conveyance of real estate or equity in the real estate.
6. A party continues wrongfully in possession after a judgment in partition or after a sale under an order or decree of a district court.
7. A lessee or a person on the premises with the lessee's consent acts in a manner that unreasonably disturbs other tenants' peaceful enjoyment of the premises.
8. The lessee violates a material term of the written lease agreement between the lessor and lessee.

The eviction process moves very quickly in North Dakota. If you're served a 3 day notice to evict or a summons and complaint for eviction, consult a lawyer as soon as possible.

If you must represent yourself, review the informational guide below for all of the information and resources available from the North Dakota Legal Self Help Center about the eviction process.

Eviction Informational Guide:

Forms **are not** available for every legal issue, circumstance or procedure in a district court civil action. If you do not find a form on this website, the form **is not** available through the North Dakota Legal Self Help Center.

You may need to create legal documents yourself. The General-Use forms in the District Court Civil Action Section of this website may be used as a starting point for creating your own legal documents.

- [Eviction For Tenants Informational Guide](#)
-

Selected Statutes (Laws) & Rules

Following are legal research starting points related to evictions. You may need to conduct additional legal research into your legal issue. See the Legal Research Section of this website.

- [Chapter 14-02.5 of the North Dakota Century Code](#)
 - [Chapter 23-10 of the North Dakota Century Code](#)
 - [Chapter 47-16 of the North Dakota Century Code](#)
 - [Chapter 47-32 of the North Dakota Century Code](#)
 - [North Dakota Rules of Civil Procedure](#)
-

Other Resources

Following are other resources related to eviction that may be of interest.

- [Legal Services of North Dakota Housing, Landlord/Tenant and Eviction Education Materials](#)
 - [North Dakota Department of Labor – Human Rights Division](#)
 - [North Dakota Office of the Attorney General Consumer Resources](#)
 - [North Dakota Vulnerable Adult Protective Services \(VAPS\)](#)
 - [S. Department of Housing and Urban Development \(HUD\)](#)
 - Legal Research Resources for Eviction ([Flickertale](#), February 2020, Pages 12-13)
-

If you do not understand any of this information, or if you have trouble filling out any of the forms located here, please see an attorney for help.

The information provided on and obtained from this site does not constitute the official record of the Court. This information is provided as a service to the general public. Any user of this information is hereby advised that it is being provided "as is". The information provided may be subject to errors or omissions. Visitors to this site agree that the Court is not liable for errors or omissions of any of the information provided.

If you have a question relating to a case that is already filed please contact the [clerk of court](#) for the county.



**67th Legislative Assembly, House Industry, Business, and Labor Committee
Public Hearing on House Bill 1440
February 2nd, 2021**

Good Morning. My name is Kelly Gorz and I am the Associate Director of High Plains Fair Housing Center, a private nonprofit with the mission to strengthen communities and ensure equal access to housing across North Dakota. On behalf of High Plains Fair Housing Center and myself, I would like to thank Chairman Lefor and the House Industry, Business, and Labor Committee for the opportunity to speak today in support of HB1440.

We urge you to issue a "Do Pass" for HB1440, relating to application of tenant payments to rent first. High Plains Fair Housing Center is a nonprofit that works to end housing discrimination based on federal and state protections. While not a differential treatment discrimination issue, this is an issue that we hear often on our intake line for North Dakota renters. We have noticed that it disproportionately affects certain populations such as people with disabilities, senior citizens on fixed incomes, New Americans, and those receiving public assistance in housing. Applying rent payments to punitive fees before a person's rent balance creates an endless cycle of late fees that can lead to eviction for North Dakota tenants. This is especially true for those on fixed incomes or experiencing poverty. Applying tenant payments to fees before rent also presents a disparate impact to renters who are on housing assistance. If a person receiving housing assistance is evicted for any reason, they become ineligible for housing assistance and are then susceptible to homelessness. This results in a loss of federal dollars directly supporting housing programs and business in North Dakota.

According to the ND Housing Finance Agency, nearly 40% of ND renters are cost burdened, meaning that they are currently spending more than 30% of their monthly income on housing expenses. Some of these fees are in the hundreds of dollars and/or accrue daily. This adds a layer of vulnerability to eviction when a following month's rent payment goes towards these fees first, creating a negative feedback loop, even for those who pay their rent on time going forward or experienced administrative errors. For example, we handled a case this past year where a client was given an eviction notice for nonpayment of rent, even though she had paid her rent amount in full every month.

www.highplainsfhc.org

High Plains Fair Housing Center | info@highplainsfhc.org
PO Box 5222 | Grand Forks, ND 58206 | 701-203-1077

Nothing in this letter is legal advice, for legal advice please see an attorney.

When our client inquired as to why she was being evicted for nonpayment of rent, she was not given a balance sheet or anything to explain why this was happening to her. She was eventually given a balance sheet when an advocate intervened and requested it on her behalf. An audit of the balance sheet showed that one of the rent payments was not applied, which resulted in compounded late fees. Each month our client subsequently paid rent, her payment was applied to the late fees first, leaving rent balances showing as underpaid. In this case, the client had proved the landlord made an accounting error, they had not missed a payment yet still faced eviction.

Earlier this year, we worked with a different client who fell behind on her rent payments and was able to get financial assistance from a local church to catch up and stay in her housing. The church called her property management company and asked what the past due rent balance was so they could pay it on her behalf to keep the client housed. The property management company told them the past due rent balance but failed to tell them that an additional balance of late fees was also outstanding. Once the tenant paid her rent the next month, it was applied to the unknown late fees, thus the tenant remained behind and subsequently received further late fees. Since the tenant has disabilities, is on a fixed income, and receives housing assistance, this tenant feels this cycle will go on in perpetuity as she doesn't have the resources to catch up.

Additionally, it is crucial to do all that is possible to keep North Dakotans housed as we continue on through the COVID-19 pandemic. If a person has a positive COVID-19 test and needs to isolate at home, that is not possible if that person does not have a home in which to isolate. While the ND Rent Bridge program has helped roughly 1,457 North Dakotans through January 15th, many landlords do not participate in the program, leaving many North Dakotans without protection. Rates of eviction are still high across the state.

It is vital that rent payments are made as small business owners are at risk of losing their investment, we are not advocating for nonpayment of rent or being unable to evict someone who does not make rent payments. We are asking for a level of protection that makes it possible for those making rent payments to remain in their homes while continuing to make payments on associated fees. This bill does not prevent landlords from recuperating costs associated with their housing program. It does protect North Dakotans from practices that lead to a vicious cycle of debt that can end in homelessness and the inability to gain future housing opportunities.

Thank you for your time and consideration.

February 2, 2021

Christina Sambor
On Behalf of the North Dakota Coalition for Homeless People
Testimony on HB 1440
House IBL Committee

Chairman LeFor and Members of the Committee:

I testify today on behalf of the North Dakota Coalition for Homeless People in favor of HB 1440. Currently, 39% of North Dakotans spend more than 30% of their income on rent, causing them to be “cost burdened” by their housing. In the current economic climate, we all know members of our communities that have struggled to make ends meet. This bill seeks to make a common-sense change to law that can help individuals teetering on homelessness stay in their homes. Doing so makes economic sense, as the costs of homelessness to our communities is well documented.

When a North Dakota renter falls behind on their rent they are often subjected to exorbitant late fees. Landlords can apply future rent payments first to these late fees, which creates a situation in which the affected tenant is unable to become current on their rent, often because they do not know that their payment was not applied to the rent balance, but rather to the late fee. This may lead to eviction and homelessness for vulnerable renters.

High Plains Fair Housing Center and other legal and social service organizations have handled a number of cases where tenants were not aware of outstanding fees and their rent payments were applied to fees first, leaving an outstanding rent balance and thus placing tenants in danger of eviction. HB 1440 addresses that issue by requiring that payments be applied to rent before late fees. This bill will protect tenants in North Dakota, which is so crucial as our communities reel from the impacts of the COVID-19 pandemic.

HB 1440 is a piece of legislation that seeks to make a common-sense change to ND law, allowing a fairer process for struggling tenant. NDCHP urges a “do pass” recommendation on HB 1440.

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.

February 2, 2021

Jeremy Petron
Lobbyist # 209
North Dakota Apartment Association

Re: House Bill 1440

We (North Dakota Apartment Association), are opposed to HB 1440.

This Bill attempts to mandate how a property owner can run their rental business in how they apply payments towards a lessee's outstanding balance. Most landlord leases outline and state within the lease how monies are applied to a tenant's ledger. A typical order would be starting with security deposit, late fees, NSF fees, repair expenses, utility billing, attorney's fees, and then rent. The reason for this accounting practice is that the current statute regarding non-payment only allows for an eviction on rent past due.

If a lessee happens to have a large repair bill or numerous unpaid utility bills that revert to the property owner, this accounting practice allows the owner to take action if a tenant is refusing to pay other legitimate charges beyond rent. If this Bill were to pass, the only recourse a property owner would have is to non-renew when the lease expires, file a small claims court action, and possibly turn the balance over to a collections agency. This process would be more cumbersome to the property owner and their property rights.

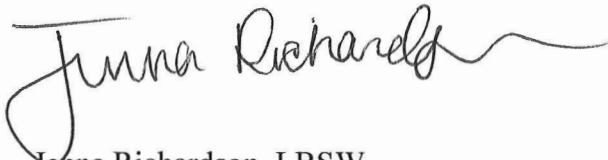
We urge a do not pass on HB 1440.

February 1st, 2021

To Whom It May Concern:

My name is Jenna Richardson, and I am a social worker at Spectra Health in Grand Forks, ND. I have been employed there for the past two years and specialize in working with individuals who are homeless or at-risk for losing their housing. I am writing to support the passage of HB1440. I have seen an immensely positive impact of the North Dakota Rent Bridge program on eviction prevention with many of our patients at Spectra Health. However, many renters in Grand Forks are subject to fees for late payment of rent. Consequently, while they may be able to have their rent paid by the Rent Bridge program, these community members must struggle to find a way to pay the accumulation of late fees that can increase daily. HB1440 would assist renters by minimizing the stress of facing ever-increasing late fees that were accumulated while obtaining and waiting for rent assistance. HB1440 would be a great contribution to the State of North Dakota by saving taxpayers the cost of providing services to individuals experiencing homelessness and by creating an additional safety net to prevent an increase in homeless individuals and families across our state. The current pandemic has placed a great deal of stress on a variety of community structures, and North Dakota renters have been at the heart of the struggle. HB1440 is a great start to better assist this population in their recovery from the pandemic and will ultimately save taxpayer dollars by keeping them in their homes.

Thank you for your consideration.

A handwritten signature in black ink that reads "Jenna Richardson". The signature is fluid and cursive, with a long, sweeping horizontal line extending from the end of the name.

Jenna Richardson, LBSW

Spectra Health

Grand Forks, ND

I am writing to offer support for HB 1440. North Dakota currently does not have many protections in place for renters, and this is a good first step. By applying payments first to rent, renters are able to stay current on their rental bill and continue to reside in housing. The current system is set up such that if an individual falls behind, even once, and ends up incurring a late fee and doesn't have the money to pay that late fee right away, they are set up to continue to incur late fees and get farther and farther behind. As an example, if someone's rent is \$500 and they pay late and get a \$50 fine but don't pay the fine, the next month when they pay the \$500, \$50 of it will go toward the late fee, thus meaning they did not submit "payment in full" and thus they will get another late fee. The next month, the system will repeat itself only now, \$50 of their \$500 payment will go toward the "past due" \$50 of the previous month, another \$50 will go toward the "late fee" and they will now be \$100 behind for the next month. At some point in the cycle, the individual will likely receive an eviction notice for being past due for several months, all because the person was late on their rent ONCE and didn't have the income to pay the extra fee. Another situation in which this may happen is when a tenant is charged a maintenance fee for a maintenance call that they were unaware of until they started getting notices that their rent is past due, since a portion of their rent payment has been applied to the unknown charge. Some may argue that the current system is needed to recover costs for landlords – I would disagree. I believe that most security deposits would be sufficient to recover unpaid late fees or maintenance bills and the like. Also, landlords have the right to take legal action to recover unpaid fees as well. The current system of applying payments feels sneaky and doesn't have tenants' best interests at heart. As North Dakotans, we need to take care of our residents and ensure they stay safely housed. HB 1440 is a great first step to that goal.

My name is Tami No Heart and I have been living in Bismarck for over 15 years. I am 60 years old and disabled. Bismarck is my home. I pay my bills on time and I am not a criminal. I urge you to issue a "do pass" on HB1440.

This legislation would protect North Dakota renters from potential excessive late fees, eviction, and homelessness. This legislation is important to me because I am being affected by this right now in my current housing situation. I have never had this problem before.

My apartment had a fire and we were told to relocate and introduced to new landlords and I was not given a new lease to sign. There was a mass confusion because of the disaster I was in and didn't understand. When the fire happened, I didn't know what to do and thought I needed to find my own place to live.

The St. Vincent Church helped me pay my past due rent so I could move. RJR applied the money that St. Vincent Church paid to my fees and not my rent so it looked like I owed rent, even though that money was supposed to go to my rent. I am on housing assistance and I receive disability income. I need to keep my housing voucher so I can have a place to live. I am afraid of being homeless because I don't even have a car to live in.

Please pass this bill to protect people like me.

My name is Gretchen Graf and I am a resident of Grand Forks, ND I urge you to issue a "do pass" on HB1440. This legislation would protect North Dakota renters from potential excessive late fees, eviction, and homelessness.

This legislation is important to me because I serve as pastor for a small congregation which is committed to adequate shelter as a human right. In the past year we have paid back rent and fees for four families to avoid their eviction.

Low income families have no resources to meet emergency needs and so are susceptible to falling behind on rent. Once this happens it's essential that future payments be paid to rent first rather than to fees so that late fees don't exponentially accumulate.

Helping partners like our congregation can help more people if we need to pay only one month's late fees because families have been credited with the rent they pay in future months. This bill will not take any funds away from landlords over time and will allow families the dignity of paying for their own housing costs more easily, with only a little emergency help from friends like us.

Chairman Keiser and members of the House IBL Committee,

I am writing to you today as a resident of West Fargo and as an attorney in private practice who represents individuals facing eviction. I strongly urge you to support HB 1440.

While the issues facing tenants in the state of North Dakota has become far more evident during the pandemic, these issues are long-standing and have only grown worse in recent years. Tenants, especially those leasing residential units, are often students, young families, and senior citizens. And, they are often at a disadvantage when negotiating or communicating with their landlord about a rental agreement or any issues that might arise.

One issue that has become very problematic in recent months is the tendency of landlords to apply any payments made by tenants to late fees, rather than to the principal balance owed. So, the balance continues to grow, and late fees get tacked on again in the following months. I know others will share statistics on how many North Dakota residents have applied for and received assistance from Rent Bridge, but I hope you will contemplate those stats and recognize the deeper issues ballooning this crisis. HB 1441 is just a small change that will ultimately **not result in any harm or detriment to landlords** but could really alleviate the financial burden on someone already facing hardship.

I recently spoke with a client who was facing eviction after being unable to pay her rent. She sought relief from the CDC moratorium and assistance from Rent Bridge and other sources. Despite the eviction being dismissed from Court and the tenant

receiving assistance from Rent Bridge and local non-profits, the landlord continues to assess late fees, court costs, “3-day notice charges,” and other fees each month, only adding to the balance this tenant owed. Since only August, the landlord has assessed more than \$1,300 in fees alone. She can’t get out from under that debt if her payments are only applied to the late fees and not to the growing principal. Of note, this client was unable to pay because she was out of work while undergoing cancer treatment. It almost seems like a bad movie.

Applying payments directly to the principal, as requested in this bill, is such a small change that would have a major impact. People facing poverty or financial hardship, for whatever reason, deserve a shot to make ends meet and this bill gets us one step closer to that goal.

I strongly urge your support of HB 1441 and ask for a “Do Pass” recommendation.
Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Kylie Oversen". The signature is fluid and cursive, with the first name "Kylie" and last name "Oversen" clearly distinguishable.

Kylie M. Oversen
Attorney at Law
West Fargo, District 13 Resident

HB 1440

I am writing in support of HB 1440. This bill will serve to protect renters in North Dakota.

During the pandemic, we have seen countless people laid off or work hours greatly reduced. It has been difficult to keep up with rent payments. If someone does not pay on time, a late fee is applied. Let's say that someone pays their rent, but they still have late fees. Some landlords apply the rent payment to their outstanding rent balance instead of to their current rent. This can leave the tenant with an outstanding rent balance, and can place tenants in danger of eviction. One family, Global Friends Coalition in Grand Forks, ND worked with, got a notice that said, "Three Days Notice to Pay or Quit." If we had not intervened, this family potentially could have been evicted as she did not have the \$740.00 to pay her rent and the \$90.00 in late fees. In her case, she was charged \$30.00 in late fees every month, for missing one month's rent.

In the end, after much work on the renter's part, the landlord "found" the check that was assumed to be late under a different account. So, the threat to be evicted was not at all fair.

A handwritten signature in cursive script that reads "Cynthia H. Shabb".

Cynthia H. Shabb, Executive Director
Global Friends Coalition

My name is Max Blosser and I am a resident of Grand Forks, ND. I urge you to issue a “Do Pass” on HB1440. This commonsense legislation will help countless renters throughout North Dakota maintain housing stability as it will help ensure less late fees and evictions take place. This legislation in turn will keep more North Dakotans from becoming homeless. Between both the COVID-19 pandemic and its economic impact on the working people of our state, compounding late fees will serve to take more of our residents out of stable housing situations and into more financial ruin. Renters with housing vouchers, for instance, will lose their voucher status if they become evicted for outstanding rent when their payments go to their late fees instead. During a global pandemic, North Dakota needs to do everything we can to keep our residents housed – and this legislation will help renters stay current with their rent and in their homes.

February 1, 2021

Dear North Dakota Legislative Assembly,

I am writing in support of HB 1440. You have before you an opportunity to decrease homelessness in North Dakota by making one simple change. Far too many North Dakotan renters find themselves unable to dig out of an avalanche of late fees. Even just one late payment can start a ripple effect where renters cannot get on top of late fee after late fee.

Everyone needs a home. Before you is a bill that can substantially increase housing security, benefitting many North Dakotans. I urge you to vote yes.

Angela Urlacher

1002 Chestnut St.
Grand Forks, ND 58201

My name is Maria Williams Kennedy and I'm a resident of Grand Forks, North Dakota.

I urge you to issue a "Do Pass" on HB1440.

This legislation would protect North Dakota renters from potential excessive late fees, eviction, and homelessness. This legislation is important to me because renters need protection from unreasonable and unscrupulous landlords who may prey on renters who have not been educated on their rights as a tenant. Homelessness in North Dakota is potentially very dangerous due to our frigid conditions. Some tenants with children could risk having their children removed from their custody if they cannot provide safe housing for their children through no fault of their own. It is crucial that renters are thoroughly educated to all of their rights as a tenant and should be protected by a mandatory signing of the explanation in front of the landlord and an agent for housing. I urge you to act on this legislation to protect those that often are denied a voice in our community: single or married Mothers and Fathers and even Grandparents who are trying very hard in the year of a pandemic to provide safe and affordable housing for their children. Children who are raised within stable homes are able to have a better success factor than children who are struggling with the stress of unsatisfactory and unstable living situations. Please allow them this legislation to help give aid to their need of a stable housing situation which will in turn allow them to focus on their academic future.

February 1, 2021

Honorable members of the North Dakota House Industry, Business, and Labor Committee,

My name is Adam Fortwengler. I've lived in Grand Forks for nearly 11 years after growing up on the Grand Forks AFB. I'm currently a resident of District 42. I am writing in strong support of HB 1440, which would ensure that any payments for residential leases are first attributed to a tenant's late rent before covering any late fees. We've seen millions of families throughout the US struggle during the pandemic and miss rent payments after being laid off or having their hours cut at work - Grand Forks and North Dakota are not immune. Half of us are at risk of housing instability with a modest unforeseen emergency. 32% of American renters were behind on October 1st, 2020 (<https://www.apartmentlist.com/research/september-housing-payments>). It's so easy to fall behind a few weeks when you're waiting for your hours to pick up or for the unemployment check to arrive, if you qualify at all.

Under the current system, making a payment towards late rent could result in the payment being applied towards fees first, leaving the rent that's past due still incomplete. Sometimes tenants aren't even aware of this dynamic, as billing can be complicated and opaque. This puts renters directly at risk of eviction, an abjectly awful proposition at any time, let alone in the middle of a pandemic.

HB 1440 is a small change with a large impact. It doesn't fundamentally change anything for landlords, who have other recourses for recovering outstanding fees, but it will help working families stay in their homes. It will save lives. I urge you to support HB 1440 in your committee and on the floor. Thank you.

Best regards,

A handwritten signature in black ink, appearing to read 'Adam Fortwengler', with a stylized, cursive script.

Adam Fortwengler

My name is Ashley Eagle, and I am a resident of Grand Forks, North Dakota. I urge you to issue a "do pass" on HB1440. This legislation would protect North Dakota renters from potential excessive late fees, eviction, and homelessness.

During the past year's pandemic, a lot of people have fallen on hard times. People who have fallen behind on their rent and who are trying their best to be responsible and provide for their families, commonly make payment arrangements with their landlord to pay what they owe over time to avoid being evicted. However, even with these payment arrangements, the money they pay in winds up getting applied to the late fees first before the balance, which leaves them with late fees the next month since it treats them as having not paid the entire month's rent (because part of it was subtracted for the late fees). This can leave people perpetually accruing more late fees, with an ever-increasing balance, and vulnerable to eviction. Eventually, their debt can wind up seemingly insurmountable and they get evicted. If they were on housing assistance, eviction can impact their ability to obtain future assistance at all, which puts them at even greater risk for homelessness.

I understand why the late fees exist. If a tenant pays late, it is a loss of revenue for the landlord, and they have bills to pay too. However, people who are making a good faith effort to pay what they owe should not be penalized with additional fees like this.

All it takes is one illness, one accident, one pink slip – and things can snowball to the point to where a hard-working family winds up losing everything. Changing the priority in which money is applied from late fees first to past-due balance first could make the difference between eviction and potential homelessness and someone being able to stay housed, working, and able to pay off what they owe. Please issue a "do-pass" on HB1440.

#4844

Chairman Lefor and members of the Industry, Business, and Labor committee:

Thank you for your time and the opportunity to give testimony on HB 1440.

My name is Kristin Rubbelke and I am the Executive Director of the North Dakota Chapter of the National Association of Social Workers (NASW-ND). I am submitting written testimony on behalf of NASW-ND's support of HB 1440. Our support for this bill is consistent with the NASW Code of Ethics which asserts that "social workers should advocate for living conditions conducive to the fulfillment of basic human needs" (Code 6.01).

NASW-ND fully supports HB 1440 since it will reduce the likelihood that North Dakota renters will be unfairly evicted from their homes and potentially face homelessness.

According to the High Plains Fair Housing Center, when a North Dakota tenant falls behind on rent they are often charged with high late fees that make it extremely difficult for them to stay current on rent. Landlords apply rent payments to late fees first, thereby ensuring that the renter is only paying a portion of rent and accumulating even more late fees. This leads to a cycle of accumulated late fees, thereby privileging landlords' economic gain over renters' lodging and security. This cycle is particularly dangerous for low-income renters in rural communities, where eviction could result in homelessness due to limited rental housing availability.

HB 1440 will help protect renters in North Dakota, particularly in the midst of the COVID-19 pandemic and its economic impact.

Thank you for your attention to this written testimony. We kindly ask for your support of HB 1440.

Sincerely,



Kristin Rubbelke, LBSW, MSW
Executive Director
NASW-ND

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Room JW327C, State Capitol

HB 1440
2/3/2021

Rents & priority of payments under a rental agreement.

(3:38) Chairman Lefor called the hearing to order.

Representatives	Attendance
Chairman Lefor	P
Vice Chairman Keiser	P
Rep Hagert	P
Rep Jim Kasper	P
Rep Scott Louser	P
Rep Nehring	P
Rep O'Brien	P
Rep Ostlie	P
Rep Ruby	P
Rep Schauer	P
Rep Stemen	P
Rep Thomas	P
Rep Adams	P
Rep P Anderson	P

Discussion Topics:

- Committee work.

Rep D Ruby moved a Do Not Pass.

Rep Hagert second.

Representatives	Vote
Chairman Lefor	Y
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	Y
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	N
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	N
Rep P Anderson	N

Vote roll call taken Motion carried 11-3-0 & Rep Stemen is the carrier.

(3:42) End time.

Ellen LeTang, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1440: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1440 was placed on the Eleventh order on the calendar.