

The Case for a “Good Faith Bargaining” Requirement in Minnesota’s New Tenant Association Law

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“It’s not ‘When we fight, we win,’ but ‘If we don’t fight, we lose.’”¹

I. Introduction

In August 2020, a group of tenants gathered outside the office of Havenbrook Homes (“HavenBrook”), soon to be owned by one of the largest rental home providers in the United States,² to protest the unsafe and inhospitable conditions in the firm’s North Minneapolis homes.³ This protest launched a long campaign against HavenBrook led by a tenant association supported by the Minneapolis tenants’ rights group “Inquilinxs Unidxs Por Justicia,” or “United Renters for Justice” (“URJ”).⁴ After months of protest and a massive rent escrow,⁵ Havenbrook was sued by the Attorney General of Minnesota and agreed with the city of Minneapolis to new, strict

¹ TRACEY ROSENTHAL & LEONARDO VILCHIS, *ABOLISH RENT 55* (2024) (quoting Los Angeles Tenant Union co-founder Walt Senterfitt) [hereinafter *ABOLISH RENT*].

² *About Us*, PROGRESS RESIDENTIAL, <https://rentprogress.com/about-us> (last visited Sep. 30, 2024). See also *Front Yard Residential Acquires Property Manager, Affordable Homes*, AFFORDABLE HOUS. FIN. (Aug. 4, 2018), https://www.housingfinance.com/news/front-yard-residential-acquires-property-manager-affordable-homes_o; Gail Kalinoski, *Pretium, Ares Close \$2.5B Acquisition of Front Yard Residential*, MULTIHOUSING NEWS (Jan. 13, 2021).

³ *About*, INQUILINXS UNIDXS POR JUSTICIA, <https://www.inquilinxsunidxs.org/en/about#timeline> (last visited Sep. 30, 2024).

⁴ Chuck Collins, *Taking on a Billionaire Landlord in the Twin Cities*, YES MAG. (Mar. 17, 2021), <https://www.yesmagazine.org/economy/2021/03/17/landlord-tenant-twin-cities>.

⁵ Max Nesterak, *Tenants withhold rent from hedge-fund owned HavenBrook Homes to force repairs*, MINN. REFORMER (May 19, 2022), <https://minnesotareformer.com/2022/05/19/tenants-withhold-rent-to-force-repairs-from-hedge-fund-owned-havenbrook-homes/>.

conditions on Havenbrook properties.⁶ Havenbrook would later settle with the Attorney General, requiring Havenbrook to pay \$2.2 million into a tenant restitution fund and forgive \$2 million in debt owed by previous tenants.⁷

In light of these efforts and URJ's work across Minneapolis, Minnesota recently codified Minn. Stat. § 504B.212, enacting new protections for tenant associations.⁸ The law has three main components: (1) an affirmative right to form a tenant association and conduct the activities necessary to doing so⁹; (2) a prohibition on lease terms limiting a tenant's right to "free expression" within the building for "organizing purposes"¹⁰; (3) retaliation protections that civilly penalize landlords that retaliate against a tenant or tenant association.¹¹ This legislation is a major step forward in tenant organizing as it lets tenants form a collective shield for legal rights like habitability, proper eviction notices, and repairs, however, the legislation is missing a crucial mandate.

Minn. Stat. § 504B.212 does not require landlords to bargain in good faith on important items like rent prices and increases. A similar requirement is offered to labor unions under the National Labor Relations Act,¹² and if added to § 504B.212, it would strengthen its protections by offering tenant associations power and leverage outside of the traditional court setting. As a

⁶ Susan Du, *Minneapolis imposes lengthy conditions on troubled corporate landlord*, MINN. STAR TRIB. (Jan. 12, 2023), <https://www.startribune.com/minneapolis-imposes-lengthy-conditions-on-troubled-corporate-landlord/600242948>.

⁷ Declan Desmond, *AG Ellison reaches 'landmark settlement' with landlords over unsafe living conditions*, BRING ME THE NEWS (Mar. 16, 2024), <https://bringmethenews.com/minnesota-news/ag-ellison-reaches-landmark-settlement-with-landlords-over-unsafe-living-conditions>.

⁸ Minn. Stat. § 504B.212 (2025) (found at <https://casetext.com/statute/minnesota-statutes/property-and-property-interests/chapter-504b-landlord-and-tenant/tenants-rights/section-504b212-effective-112025-tenant-right-to-organize-tenant-associations>).

⁹ *Id.* at subd. 1(a).

¹⁰ *Id.* at subd. 1(f).

¹¹ *Id.* at subd. 2.

¹² 29 U.S.C. § 158(a)(5) (2024); 158(b)(3) (2024); *see also* *Collective Bargaining (Section 8(d) & 8(b)(3))*, NAT'L LAB. REL. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/collective-bargaining-section-8d-8b3> (last visited Oct. 3, 2024).

result, it would allow tenants to collectively bargain about aspects of their lease that can't be litigated in court, like rent prices and increases.

II. § 504B.212 Does Not Go Far Enough

Tenant associations can have an enormous impact on their members' knowledge of their legal rights and enforcement of said rights. Two of the largest barriers to tenants, especially those who are low-income, are (1) a lack of legal knowledge¹³ and (2) limited resources or fear of taking individual legal action.¹⁴ Minn. Stat. § 504B.212 helps tenants learn about their rights, especially given that nonresident organizers can participate,¹⁵ hear from other tenants about problems similar to their own, and act as a collective rather than as an individual in addressing legal needs.¹⁶

¹³ LEGAL SERV. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 49 (2022) (“Among low-income Americans with at least one reported problem, only 5% knew that a legal professional could help resolve all of the types of [civil legal] problems they experienced; the vast majority (95%) either did not think a legal professional could help or were not sure for at least one problem.”); Michele Evans & Jonathan Gross, *Fannie Mae Research Identifies Challenges Faced by Today's Renters*, FANNIE MAE. (Mar. 9, 2021), <https://www.fanniemae.com/research-and-insights/perspectives/research-identifies-renter-challenges> (“A majority of renters (64%) said they only know a little or nothing about their rights.”).

¹⁴ LEGAL SERV. CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 50–52 (2022) (“[L]ess than one-half (45%) of low-income Americans express confidence that they could find a lawyer that they could afford while 53% either have low confidence or are not sure . . . Among those who did not seek legal for at least one of their recent civil legal problems, nearly one half . . . cited concerns about cost as a reason why.”); Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1288–89 (2016) (finding four main categories for low-income respondents not seeking civil legal assistance: (1) past negative experiences with the criminal justice system making them resistant to pursuing civil legal action; (2) believing that justice depends on the price paid for a lawyer; (3) past negative experiences with public institutions leading them to avoid similar experiences; (4) a belief that they are self-sufficient and capable of taking care of their own problems). *See also Daniel W. Bernal, Ashamed, Judged, and Unsafe: A Qualitative Study of Tenant Justice Perceptions to Inform the Redesign of Housing Court*, 52 N.M.L. REV. 70 (2022).

¹⁵ Minn. Stat. § 504B.212, subd. 1(a)(4); (e); (f) (2025). *See also Organizing*, HOMELINE <https://homelinemn.org/organizing/> (last visited Oct. 3, 2024) (detailing the efforts of HomeLine, a tenant advocacy non-profit, in organizing local tenant associations); *Organizing Resources*, UNITED RENTERS FOR JUST., <https://www.inquilinxsunidxs.org/en/overall-resources/organizing-resources> (last visited Oct. 3, 2024).

¹⁶ *See* ABOLISH RENT, *supra* note 1, at 84 (“In their everyday lives, tenants are pushed to solve their problems as atomized individuals, clients of social workers and tenant lawyers who will help us negotiate the legal system, accessing what few rights we have, and no more. Of course, this limits tenants to acting within states of personal emergency—after the eviction notice, when we’re already in court. It constrains us to adopt concessionary and defensive stances in advance. It forces us to give up our agency to an expert who will do what they can for us. And it forces us to struggle alone.”).

But tenant organizing does not always stem from just habitability issues. Instead, tenants can be compelled to organize based on rent increases and/or an inability to pay the rent, as seen in the COVID-19 outbreak.¹⁷ Tenant associations have often formed in response to otherwise lawful rent increases, gentrification, and landlord efforts to remove Section 8 or rent stabilized units.¹⁸ Under the law as written, Minnesota tenants interested in challenging these actions or terms have no guarantee that their landlord will actually listen or negotiate, unless they try to grab the landlord’s attention through their wallet with a collective rent strike. In effect, the statute protects a tenant association’s “free exercise” within the rental building but lets it to fall on deaf ears on crucial issues.

III. The Importance of a Good Faith Bargaining Requirement

The NLRA imposes on employee unions and employers to bargain in good faith with one another “with respect to wages, hours, and other terms and conditions of employment”¹⁹ The NLRA’s good faith bargaining requirement came in part as an attempt to bring peace to labor organizing, which would occasionally become violent because unions lacked legal rights to organize or bargain.²⁰ But tenant organizing, including rent strikes, have a similarly long and

¹⁷ Jake Johnson, ‘Can’t Pay, Won’t Pay’: Thousands Take Part in U.S. Rent Strike, INEQUALITY.ORG (May 4, 2020), <https://inequality.org/research/cant-pay-wont-pay-thousands-take-part-in-u-s-rent-strike/> (quoting from U.S. Rep. Alexandria Ocasio-Cortez “You cannot coerce someone into doing something that they cannot do People aren’t striking because they don’t feel like paying rent. They’re striking because they can’t pay rent.”).

¹⁸ ABOLISH RENT, *supra* note 1, at 61–72 (discussing the “Los Mariachis de Union de Vecinos” strike in Boyle Heights, Los Angeles, where residents of an apartment building successfully organized against a landlord’s almost doubling of rent), at 107 (discussing the K3 Holdings tenant union in Los Angeles, which organized against landlord efforts to remove tenants with rent stabilized units), and at 122–31 (discussing the Hillside Villa tenant union, which organized to keep their Section 8 housing after the building’s rental covenant with the government expired).

¹⁹ 29 U.S.C. § 158(d) (2024). See generally *Collective Bargaining (Section 8(d) & 8(b)(3))*, NAT’L REL. BD., <https://www.nlr.gov/about-nlr/rights-we-protect/the-law/collective-bargaining-section-8d-8b3> (last visited October 15, 2024).

²⁰ *E.g.*, *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 42 (1937) (“Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife.”); Michael Wachter, *The Striking Success of the National Labor Relations Act*, CATO INST. (2014), <https://www.cato.org/regulation/spring-2014/striking-success-nlra> (“After

continuous history,²¹ and deals with an equally important issue: housing. Yet no good faith requirement has been implemented. Now that Minnesota protects tenants' right to organize, it should take this next step of imposing a good faith bargaining requirement so that: (1) landlords cannot engage in bad faith practices to avoid tenant demands and (2) tenants do not have to rely so heavily on the risky actions like rent strikes.

A. A good faith requirement could cut down on landlords' bad faith acts to avoid negotiation

Tracey Rosenthal, the co-founder of the Los Angeles Tenants Union, details a case study in landlord bad faith in telling the story of the “Los Mariachis de Union de Vecinos” (LMUV) in Boyle Heights, Los Angeles, which arose in protest of their landlord's massive rent increases and their apartments' poor conditions.²² The LMUV tried to bargain with the landlord and protest the landlord, and even received public support from the city councilman—but the landlord undermined the union's efforts, leading LMUV to go on a rent strike.²³ The landlord approached tenants individually, offering two months of rent and thousands in cash to leave.²⁴ The landlord refused to bargain with the union as a whole, and instead agreed only to meet individual tenants, trying to “pit tenants against each other and lure them out one by one.”²⁵ Then, the landlord

the NIRA was declared unconstitutional, a second attempt to calm industrial strife was made with the 1935 passage of the National Labor Relations Act, better known as the Wagner Act.”)

²¹ See Glyn Robbins, *The Radical Legacy of New York's Winter Rent Strike*, TRIB. MAG. (Dec. 26, 2021) <https://tribunemag.co.uk/2021/12/new-york-1907-rent-strike-pauline-newman>; ROBERT FOGELSON, *THE GREAT RENT WARS: RENT STRIKES AND RENT CONTROL IN NEW YORK CITY, 1917-1929* (2013); Sarah Judson, “We're Walking Proud and Talking Loud Because We're the New Black Joes!": Community Leadership and Tenants Rights in Asheville's 1968 Rent Strike, 46 J. OF URB. HIST. 816, (2019); Rebecca Burns, *Hundreds of Kansas City Tenants Will Strike to Demand Repairs, Rent Caps*, INTHESETIMES (Sep. 27, 2024), <https://inthesetimes.com/article/rent-strike-kansas-city-tenants-union>; *Tenant Stories*, L.A. TENANTS UNION <https://latenantsunion.org/en/tenant-stories/> (last visited Oct. 3, 2024) (describing stories of Los Angeles, California tenants forming unions to fight against poor living conditions and rent increases).

²² ABOLISH RENT, *supra* note 1, at 61–62.

²³ *Id.* at 69.

²⁴ *Id.* at 74.

²⁵ *Id.* at 75.

began “ignoring maintenance requests and enforcing strict rules around guests and parking spaces.”²⁶ Only after months of protests, confrontation, and public shaming did the landlord finally meet with the union in September.²⁷

These practices are refusals to meaningfully engage with tenant associations and demonstrate a landlord’s capacity to engage in bad faith tactics to avoid tenant demands. A good faith requirement could cut down on this behavior, given that analogous practices are already considered “bad faith” or “unfair labor practices” under the NLRA. Further, the NLRA requires employers to meet with union representatives and not target individual employees for negotiation,²⁸ which would have prohibited the LMUV landlord’s targeting individual tenants. And conduct like the LMUV landlord’s seemingly pretextual rule enforcement is also considered a bad faith or unfair labor practice.²⁹

But in considering the examples laid by NLRA precedent, courts should only interpret them as persuasive, and not binding. While labor and tenancy negotiations both contemplate important subject matter, courts should take care to analyze landlord tenant negotiations with an understanding of the serious potential consequences: a tenant staying sheltered or becoming unsheltered. For that reason, Minnesota could help recognize housing as a human right³⁰ in this statute by instructing courts to interpret the statute liberally in favor of tenant associations.

²⁶ *Id.*

²⁷ *Id.* at 77.

²⁸ 28 U.S.C. § 158(a)(5) (2024) (describing a refusal to meet with the union as an unfair labor practice); *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678 (1944); *J. I. Case Co. v. NLRB*, 321 U.S. 332 (1944).

²⁹ *NLRB v. Transp. Mgmt. Corp.*, 462 U.S. 393, 398 (1983) (“Under these provisions it is undisputed that if the employer fires an employee for having engaged in union activities and . . . if the reasons that he proffers are pretextual, the employer commits an unfair labor practice.”).

³⁰ Shannon Antinori, *‘Health Care and Housing Are Human Rights’: Walz Speaks at DNC*, PATCH (Aug. 22, 2024), <https://patch.com/illinois/chicago/healthcare-housing-are-human-rights-walz-speaks-dnc>.

B. A good faith requirement would reduce rent strike necessity and could offer actual due process for tenants

Currently, Minnesota tenant associations law is limited to two major methods of power leverage when protesting terms like rent increases and stabilization: public protest and rent strikes. While publicly protesting a problematic rent increase can place pressure on a landlord, results from this can be slow if there is no requirement for the landlord to at least listen and negotiate.

And though rent strikes can force negotiations, they are harder to organize because tenants risk eviction. Also, beyond the immediate risk to tenants, rent strikes can lead to nonpayment eviction actions, they endanger judicial efficiency because (1) it is in the tenant's best interest to stall proceedings,³¹ and (2) the real reason behind the proceedings, a rent increase or non-litigable concern, is not actually addressed since the court would only address the nonpayment question in the proceeding and a rent strike is not a recognized defense to such an action.³² Given this instability and inefficiency, Minnesota law should require tenants and landlords negotiate in good faith so that rent strikes are truly a means of last resort and that concerns can be addressed beforehand.³³

To safeguard tenants with due process, Minnesota law could also consider expanding the scope of rent escrow to include when a landlord acts in bad faith. Rent escrow, governed by

³¹ ABOLISH RENT, *supra* note 1, at 74.

³² *See Id.* (“[The tenant attorneys] were not here . . . to win the case . . . the rent strike was an organizing strategy, and the legal strategy was to give that organizing strategy more time.”); Greg Baltz, *Resurrecting the Rent Strike Law*, 26 U. PA. J. L. & SOC. CHANGE 1, 3 (2023) (discussing this as a motivation for New York's creation of a rent strike law).

³³ *Cf.* ABOLISH RENT, *supra* note 1, at 68–69 (“What if they withheld rent? Blaney had raised the idea of a rent strike before, but the association had wanted to wait. They tried communicating with the landlord. They tried protest. They even submitted a letter from the councilmember representing their district, who encouraged the landlord to negotiate. But since none of those things got the landlord's attention, maybe an impact on his pocketbook would.”).

Minn. Stat. § 504B.385, provides that tenants can deposit due rent with a court if a landlord has violated the covenant of habitability or any local, county, or state housing regulation.³⁴ After depositing the rent with proper notice to the landlord of the violation, a hearing is scheduled within 14 days.³⁵ After the hearing, a judge can impose fines, order rent abatement, order a continuous escrow until the violation is fixed, or release the rent.³⁶ The statute also protects tenants that bring escrow actions from landlord retaliation.³⁷

Tenants working together to bring multiple escrow actions has already been an effective method of getting necessary repairs.³⁸ Expanding rent escrow's scope to include a landlord's bad faith would strengthen tenant associations by offering due process to tenants and ensuring their claims are resolved with court orders, instead of through eviction hearings.

IV. Conclusion

Minn. Stat. § 504B.212 is a significant step in Minnesota tenants' rights. It empowers tenants by creating an affirmative right to form a tenant association and protecting tenant associations' free exercise within their rental buildings. While the statute advances tenants' legal rights to habitable and safe housing, it does not address other tenant associations' concerns—like rent prices and increases—because they are otherwise non-litigable, and the statute does not

³⁴ Minn. Stat. § 504B.385, subd. 1 (2024).

³⁵ *Id.* at subd. 5.

³⁶ *Id.* at subd. 9.

³⁷ *Id.* at subd. 11.

³⁸ See Kyle Stokes & Ava Kian, *Determined south Minneapolis tenants fought for repairs in their apartment building: inside a 'rent escrow' case*, MINN. POST (August 23, 2023), <https://www.minnpost.com/metro/2023/08/determined-south-minneapolis-tenants-fought-for-repairs-in-their-apartment-building-inside-a-rent-escrow-case/>; Izzy Canizares, *Residents fight back against Lowry Building foreclosure after months of poor living conditions*, BRING ME THE NEWS (Aug. 23, 2024), <https://bringmethenews.com/minnesota-news/residents-fight-back-against-lowry-building-foreclosure-after-months-of-poor-living-conditions/>; Max Nesterak, *HavenBrook tenants bring demands for repairs to landlord's office*, MINN. REFORMER (June 17, 2022), <https://minnesotareformer.com/2022/06/17/havenbrook-tenants-bring-demands-for-repairs-to-landlords-office/>.

require landlords to bargain in good faith. To fix this, Minn. Stat. § 504B.212 should be amended so that: (1) tenant associations and landlords are required to bargain with one another in good faith; and (2) rent escrow actions can be brought when a landlord does not bargain in good faith.