CHAPTER 504

LANDLORDS AND TENANTS

504.01 DISTRESS FOR RENT.

The reasonable value of seed used for sowing a crop upon a farm by an occupant who vacated the farm, and for which there can be no recovery quasi ex contractu, cannot be allowed in litigation of damages recovered by the owner against the occupant for a violation of his covenant to surrender possession of the premises in good repair at the expiration of the term. Mehl v Norton, 201 M 203, 275 NW 843.

As it is optional with the lessor whether to avail himself of the breach of a covenant giving him the right to forfeit a lease, it necessarily follows that if he desires to forfeit he must manifest his intention by some clear and unequivocal act; and where there is an option to purchase which the tenant desires to exercise, the lessor cannot abrogate the tenant's right of purchase by claiming certain past violations of the lease constituted a forfeiture. Gassert v Anderson, 201 M 516, 276 NW 808.

A lease is a conveyance of land or tenements for a term less than the party conveying has in the premises, in consideration of rent or other recompense. Some visionary interest must be left in the lessor. A lease is something more than a mere conveyance of an estate; it is a contract for the possession and profits of land or tenement for a certain period. Craig v Summers, 47 M 189, 49 NW 742; State v Bowman, 202 M 44, 279 NW 214.

Where the Elks' lodge leased space in an office building and a member of the lodge, familiar with the building and knowing that elevator service had terminated at the time he wished to go to the club rooms, stepped through a partly opened door into the elevator shaft, the lobby being dimly lighted, without investigating whether or not the elevator car was at that first floor, was guilty of contributory negligence as a matter of law and thus precluded from recovering damages from the owner of the building. Murray v Albert Lea Co. 202 M 62, 277 NW 424.

In this state the usual cropping season is the spring season. Farm leases are made with reference to spring crops. Planting of winter wheat in the fall cannot be held to have saved defendant's right of possession for the purpose of planting the spring crop of the following season, or his right of occupancy of the premises. In the instant case, by the terms of his lease, he would not lose his winter wheat crop and would have certain rights of removal when the crop matures. Jennison v Priem, 202 M 338, 278 NW 517.

It is the duty of an owner of real property to maintain the premises in such condition as not to render abutting public ways unsafe or dangerous, and the consequent liability for breach of this duty continues after a lease of the premises, where the lease reserves a right of entry in the owner for the purpose of making repairs, Paine v Gamble Stores, 202 M 462, 279 NW 257.

The relation of landlord and tenant exists where one person occupies the premises of another in subordination to that other's title, and with his consent. No particular form of words is necessary to create a tenancy. Gates v Herberger, 202 M 612, 279 NW 711.

Gasoline pumps, tanks, engines, and other trade appliances installed, paid for, and used exclusively by the tenant, are trade fixtures and as such removable during the leased term, removal being made without material injury to freehold. Moffat v White, 203 M 47, 279 NW 732.

Defendant with knowledge of the existence on the premises of an abandoned, covered cesspool, let the premises to a tenant who had no knowledge of the existence of the covered cesspool, and plaintiff, a guest of the tenent, fell into the cesspool

and was injured. The landlord was properly held liable in damages to the guest. Honan v Kinney, 205 M 485, 286 NW 404.

Where premises are in exclusive possession of the lessee, the lessor having no business thereon, the two are not engaged in the accomplishment of the same or related purposes within the meaning of section 176.06, and where the owner is sued in tort for the result of knowingly constructing a concealed trap on the premises, evidence that some wrong of the lessee rather than that of the owner is the cause of plaintiff's injury, is admissible under a general denial. Murphy v Barlow, 206 M 537, 289 NW 567.

A landlord is not liable for a tenant's injuries from defective premises unless there is a warranty or violation of covenant to repair, absent fraud or concealed dangers known to landlord and unknown to tenant. Mani v Erickson, 209 M 65, 295 NW 506.

Lease providing that "lessee is going to erect a building for a vegetable stand on the property" contains no restriction whatever as to the use of the premises; the quoted provision merely announcing lessee's purpose. Justen v Oxboro, 209 M 227, 296 NW 169.

A landlord is bound to exercise reasonable care to keep in repair a common stairway reserved for the use of his tenant. Heinman v United Properties, 210 M 343, 298 NW 247.

The provision in a lease requiring the written intent of the lessor to any assignment thereof may be waived by the lessor, and is waived by his acceptance of the rent from the assignee with knowledge of the assignment; and when a third party is in possession of leased premises under the lessee the law presumes that the lease has been assigned by the lessee to such person, and such assignee is liable for rent during the time when he was in possession. O'Neil v Oys, 216 M 391, 13 NW(2d) 8.

Federal regulations, adopted pursuant to statutes, which at certain times prevent and suspend the right of a lessee of a gasoline station to do business and at all times limit the volume of business transacted, are governmental action, laws, and regulations preventing, suspending, and limiting the use of the filling station within the meaning of an option in the lease giving the lessee the right to terminate the lease if during the term the use of the leased premises for a filling station should "be prevented, suspended or limited by any zoning statute or ordinance, or any other municipal or governmental action, law or regulation; or the use of said premises be affected or impaired by the widening, altering, or improving of any streets fronting or adjoining said premises; or should the state or federal government reroute any state or federal highway now adjacent to the premises leased." The rule of ejusdem generis has no application where only one member of a class is enumerated which exhausts the class and is followed by general words which include others outside the class. Orme v Atlas Gas & Oil Co. 217 M 27, 13 NW(2d) 757.

A lessor of land is subject to liability for a condition of disrepair arising after the lessee has taken possession. If the lessor has agreed to repair it and if such disrepair creates a risk which the performance of the repair would have prevented, the evidence in the instant case sustains the finding that lessor here agreed to repair a screen window so that the wire mesh thereon would not become separated from the frame thereof to the danger of the lessee's children. Saturnini v Rosenblum, 217 M 147, 14 NW(2d) 108.

A three-year lease made by an administrator contained this provision for option of renewal: "In the event that lessor is still the acting administrator of the estate of Isaac Skiles, Jr., deceased, at the expiration of this lease, then and in that event the lessee shall have the option of renewing this lease for a three-year period from the date of the expiration thereof." Prior to expiration of the lease, a one-fourth interest in the property was decreed to an heir and the remaining three-fourths sold by the administrator, who was still in possession of the balance of the estate. Since administrator was no longer acting as such of the property covered by the lease at the end of the three-year term, option clause became inoperative with the failure of the contingency. Church of Saint Martin v Frissell Co. 217 M 597, 15 NW(2d) 20.

An option is a privilege given by the owner of property to another to buy the property at his election upon certain terms and conditions, as distinguished from an actual contract for sale. In the instant case, the contract being an option, in an action to compel specific performance of the option contract, it was encumbent upon the optionee to allege tender of performance within the time specified, or a waiver or refusal thereof where, as here, it appeared that certain conditions were to be fulfilled before a date certain, or the contract would terminate. Vogt v Ganlisle, 217 M 601, 15 NW(2d) 91.

If there is no agreement by a landlord to repair demised premises; if he is not guilty of fraud or concealment as to their state or condition; if defects in the premises are obvious and do not constitute a hidden danger, nuisance or trap; if there is no showing that at the time the premises were leased they were unfit for their intended purpose, the tenant takes the risk as to the safety of their occupancy, and the landlord is not liable in tort to the tenant's invitees for injuries received upon the premises by reason of such defects. Ryberg v Ebnet, 218 M 115, 15 NW(2d) 456.

An estate for years is one limited to a certain time, as for a year, or any greater or less period of fixed duration. A tenant under a lease is one who has been given a possession of land which is exclusive even against the landlord, unless his lease permits his entry, saving also the landlord's right to enter to demand rent or make repairs; while a licensee is one who has mere permission to use the land, dominion over it remaining in the owner and no interest in or exclusive possession of it being given to the occupant. Seabloom v Krier, 219 M 262, 18 NW(2d) 88.

In an action for rent under an oral lease from month to month, whether rat evil on rented premises amounted to constructive eviction, and whether tenant waived his right to assert such defense, were for the jury. Building Ass'n v Van Nispen, 220 M 504, 20 NW(2d) 90.

Under the emergency price control act of 1942, section 203, 204, as amended by the stabilization extension act of 1944 (50 USCA, Appendix sections 923, 924), the emergency court of appeals created by said act, and the United States supreme court upon review, have exclusive jurisdiction to determine the validity of regulations or orders issued under section 2 or of any price schedule effective in accordance with the provisions of section 206 of said act. Desper v Warner Holding Co. 219 M 607, 19 NW(2d) 62.

If an owner maintains on a public sidewalk a facility for the convenience of a building abutting such sidewalk, and permits that facility to become defective and dangerous and passes such condition on to the lessee, he may become liable for the injuries caused by such condition. Shepstedt v Hayes, 221 M 74, 21 NW(2d) 200.

A lessor cannot create in his lessee a greater interest in real property than the lessor possesses. Lessee takes subject to all claims of title enforceable against lessor. Where vendee's interest in contract for deed covering real estate is legally terminated, an oral lease of a portion of the real property covered by said contract, previously made by said vendee, terminates with termination of vendee's interest in such contract for deed. Schrunk v Andres, 221 M 465, 22 NW(2d) 548.

Where tenant of real property holds over after expiration of lease, contrary to will and specific instructions of owner, owner has option of treating such occupancy either as a trespass or as that of a tenant holding over. In the instant case the continued occupancy of the defendant constituted a trespass. Schrunk v Andres, 221 M 465, 22 NW(2d) 548.

The words in a lease, "subject to all the terms and conditions of said lease," do not impose contractual liability on an assignee to a lessor to carry out the covenants of a lease, since they are words of qualification and not of contract. In Minnesota, an assignee of a lease may by assigning it, even to a pauper, put an end to his liability in point of time. A lease provision that lessee, in lieu of additional rents, would pay all taxes and assessments levied during term beginning with those for 1909, including all annual instalments of special assessments for local improvements becoming due and payable during term on or after the first Monday of January, 1910, and would pay taxes and assessments at least 30 days before any fine, penalty, interest, or cost might be added thereto for nonpayment

thereof, should be read in its entirety and in the light of the conduct of the parties in respect to it in determining obligations of assignees of lease thereunder. McKnight v Central Hanover Bank & Trust Co. 120 F(2d) 311.

Contracts to farm on shares. 2 MLR 43.

Distinction between subleases and assignments. 8 MLR 609.

Nuisance as constituting constructive eviction. 16 MLR 445.

504.02 CANCELATION OF LEASES IN CERTAIN CASES; ABANDONMENT OR SURRENDER OF POSSESSION.

As it is optional with the lessor whether he avails himself of a breach of a covenant giving him the right to forfeit a lease, it necessarily follows that if he desires to forfeit he must manifest his intent by some clear and unequivocal act, but where a lease contains an option to purchase and the tenant gives notice of an election to purchase, the lessor cannot abrogate such right by undertaking to forfeit the lease because of some past violation of the lease. Gassert v Anderson, 201 M 516, 276 NW 808.

In this state the usual cropping season is the spring season. Farm leases are made with reference to spring crops. Planting of winter wheat in the fall cannot save the tenant's right of possession. Defendant, however, does not lose his winter wheat crop and reserves the right of entry to harvest it when it matures. Jennison v Priem, 202 M 338, 278 NW 517.

Although a tenant has defaulted in rent payments, his possession is lawful against a landlord who never properly terminated the tenancy. State v Brown, 203 M 505, 282 NW 136.

Provision in a lease requiring lessor's written consent to assignment thereof may be waived by him, since such provision is for his benefit, and such waiver may be shown by his subsequent conduct or oral assent thereto. Keller v Henvit, 219 M 580, 18 NW(2d) 544.

A lessor cannot create in his lessee a greater interest in real property than such lessor possesses. The lessee takes subject to all claims of title enforceable against the lessor. Where the vendee's interest in a contract for deed is legally terminated, an oral lease of a portion of the property covered by said contract previously made to the tenant by said vendee terminates with the termination of the vendee's interest in such contract for deed. Eviction is dependent upon the relationship of landlord and tenant. Schrunk v Andres, 221 M 465, 22 NW(2d) 548.

Where on the death of a life beneficiary, remainderman permitted trustee to continue to act for her, and trustee agreed orally to five-year extension of ten-year lease in consideration of lessee's installation of artesian well which was to become property of lessors at expiration of lease, the lease is valid. Zuckman v Freiermuth, 222 M 172, 23 NW(2d) 541.

In the instant case the lease could be terminated if there was a default in the performance of any of the covenants and especially that to build which might have been one of the principal objects of the lease. Lindeke v Associates, 146 F. 630.

The tenant at the time of taking possession of the leased space in an office building had full knowledge that the landlord was about to construct a new hallway, and when nevertheless the landlord did not construct the new hallway, the tenant retained possession of the leased premises for a considerable time, but this retention of the premises manifested an election to accept performance tendered and lost the right to rescind or refuse to comply with the terms of the lease. Josten v Medical Arts Building, 73 F(2d) 259.

Damages caused by the tenant's wrongful abandonment of leased premises before expiration of term. 13 MLR 260.

Abandonment by tenant. 17 MLR 96.

Leases of agricultural lands for town beyond statutory limitations. 26 MLR 901.

Restrictive covenant against occupancy by non-Caucasians; action to enforce. 31 MLR 385.

504.03 TENANT MAY NOT DENY TITLE; EXCEPTION.

Perpetual leases. 5 MLR 566.

Tenant estopped from denying title of the landlord when title is in the government. 6 MLR 328.

504.04 PERSON IN POSSESSION LIABLE FOR RENT; EVIDENCE.

A description of real estate in a crop mortgage is sufficient if it is such that a prudent disinterested person, aided and directed by such inquiries as the mortgage suggests, is able to identify the real estate. A tenancy from year to year can only be terminated by the statutory three months notice to quit, terminating with the year. It is not determined by the death of either the landlord or the tenant. The supreme court takes judicial notice of the fact that farm leases in Minnesota do not terminate in the summer months but in the spring or fall. State Bank v Dixon, 214 M 40, 7 NW(2d) 351.

Where a lease, executed by one partner in his name only, is executed in fact for the firm and for its benefit and it actually receives the benefit, the lessor, after discovery of the true situation, may, in an action to recover unpaid rent under the lease, recover against all the partners, including the undisclosed partner, upon the theory that each partner is an agent of the copartnership for the purposes of its business. Kavalaris v Cordalis, 219 M 443, 18 NW(2d) 137.

The words in a lease "subject to all the terms and conditions of such lease" do not impose contractual liability on an assignee to a lessor to carry out the covenants of the lease, since they are conditions of qualification and not of contract. In Minnesota an assignee of the lease may by assigning it even to a pauper put an end to his liability in point of time. Under lease provisions that lessee in lieu of additional rent would pay certain taxes and assessments, the assignees of a lease were liable for only such annual instalments of special assessments as fell due during the time that privity of estate existed between the lessee and the lessor. McKnight v Central Hanover Bank, 120 F(2d) 311.

Agreement to pay taxes as rent reserves. 17 MLR 552.

Liability of assignees of lessee. 19 MLR 345.

Personal liability of trustee as assignee of leasehold on covenants running with the land. 19 MLR 568.

Actual partial eviction by the purchaser of part of the reversion as suspension of the rent. 21 MLR 753.

504.05 RENT LIABILITY; DESTROYED UNTENANTABLE TENEMENTS.

Where the tenant under the lease covenanted to repair and keep the plumbing and furnace in good order, the fact that the plumbing in the leased premises was unsanitary and the furnace was defective does not release the tenant from liability for rent. Miller v Pouliot, 199 M 331, 271 NW 818.

Condemnation of leased premises; compensation. 1 MLR 281.

504.06 ESTATE AT WILL, HOW DETERMINED; NOTICE.

1. **In general**
2. **When no default in rent**
3. **When default in rent**
4. **Mode of service**
5. **Waiver of notice**

1. In general

Notice to quit premises under a month to month tenancy asked vacancy of premises so that possession could be had "on and after May 31, 1936," the trial court submitted the question of construction of notice to the jury and the jury found it suf-

ficient. The notice was not insufficient as a matter of law. Hyman v Kahn, 199 M 139, 271 NW 248.

Although a tenant has defaulted in rent payments, his possession is lawful against a landlord who never properly terminated the tenancy and who had not reserved the right to enter upon default in payment of rent. State v Brown, 203 M 505, 282 NW 136.

See, State Bank v Dixon, 214 M 39, 7 NW(2d) 351, noted under section 504.04.

Lessor's interest as vendee under executory contract having terminated, the lease from the vendee automatically expires. Schrunk v Andres, 221 M 465, 22 NW (2d) 548.

Where a tenant at will sublets the premises to a third party, reserving the right to resume possession at the expiration of the subtenancy, on return from military service, the transaction is a sublease, not an assignment, even though the subtenant paid the rent direct to the owner. Notice to quit is not required. The tenant may maintain an unlawful detainer action against his sublessee. Anderson v Ries, 222 M 408, 24 NW(2d) 717.

Necessity of notice to quit where tenant holds over under a lease for a definite term. 6 MLR 250.

Effect of provision in lease giving lessor sole right to terminate. 16 MLR 214.

Landlord and tenant; tenancy at will; effect of a sublease by the tenant at will; assignment of sublease. 31 MLR 620.

504.07 URBAN REAL ESTATE; HOLDING OVER.

Where tenant of real property holds over after expiration of lease, contrary to will and specific instructions of owner, owner has option of treating such occupancy either as a trespass or as that of a tenant holding over. In the instant case the continued occupancy of the defendant constituted a trespass. Schrunk v Andres, 221 M 465, 22 NW(2d) 548.

Necessity of notice to quit where the tenant holds over. 6 MLR 250.

504.09 NOTICE OF CANCELATION OF LEASES.

The notice to terminate a month to month tenancy, although technical as to the amount required, may be informal as to its contents. In the instant case, the statement by the landlord that the tenants had "until June 30" to vacate the premises must be construed together with the statement that he "expected to occupy the premises by July 1," was not defective on ground that it showed that purchasers intended to occupy on June 30, since "by July 1" included July 1st. Heinsch v Kirby, 223 M 302, 26 NW(2d) 363.