"COMPLAINTS" ABOUT EVICTION: CENTRAL HOUSING AND MINNESOTA'S APPROACHES TO RETALIATORY EVICTION PROTECTION

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INTRODUCTION

In *Central Housing Associates, LP v. Olson*, the Minnesota Supreme Court denied statutory retaliation protections to a tenant who sent his landlord a written complaint detailing discrimination and harassment by the landlord's employees.[1] Instead, the court established a new common law defense to retaliatory evictions when an eviction arises from a written tenant complaint to a landlord.[2] The ruling, however, raises numerous issues by both inadequately defining who is protected by the new common law defense, and by poorly explaining how the defense works.[3] The fragmentation of the law and its lack of clarity pose a serious hurdle for tenants, who are often unrepresented by attorneys,[4] as well as for landlords, who are expected to act in a nonretaliatory manner. This Note seeks to address the issues posed by *Central Housing* in an era of landlord/tenant reform, and to highlight the need for a statutory scheme that promotes uniformity and simplicity in landlord/tenant cases while adequately protecting tenants from retaliatory evictions.

While the outcome of *Central Housing* was appropriate, i.e. the tenant was protected from an eviction which a jury found to be retaliatory and based on racial bias, the decision leaves Minnesota law on retaliatory eviction fragmented,[5] and creates uncertainty about what constitutes protected tenant conduct, casting hardship on landlords and tenants alike.[6] Consequently, both *Central Housing* and subsequent

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1 Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398, 401 (Minn. 2019).

2 *Id.* at 409 ("[I]n this case and going forward, tenants have a common-law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease. . . . A tenant's good-faith complaint that the landlord has materially violated the law or lease should not lead to homelessness for the tenant and the tenant's family.").

3 *See infra* Section II.C.

4 *See* Russell Engler, *Connecting Self-Representation to Civil* Gideon: *What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L.J. 37, 81–82 (2010) (discussing the lack of tenant-defense lawyers, and the factors that make tenant-defense representation in eviction proceedings especially valuable).

5 The *Central Housing* defense creates difficulty as a third retaliatory eviction defense under Minnesota law. *See* MINN. STAT. § 504B.441 (2019); MINN. STAT. § 504B.285, subdiv. 2 (2019).

6 For a discussion of how legal uncertainty is both an inescapable reality and a negative influence on the conduct-regulating function of law, see generally Anthony D'Amato, *Legal Uncertainty*, 71 CALIF. L. REV. 1 (1983). More precise standards conserve resources and are more likely to deter socially undesirable conduct. *See, e.g.*, Daniel J. Gifford, *Communication of Legal Standards, Policy Development, and Effective Conduct Regulation*, 56 CORNELL L. REV. 409 (1971). Landlords and tenants alike shape their conduct based on housing laws. A lack of clarity in the law, coupled with a lack of tenant representation, is certain to cause misinformed decisions about when to fight evictions. *See* Engler, *supra* note 4, at 46–51. *See also* Erik Larson, *Case*

lower court cases leave unanswered the question of what type of tenant may avail themselves of the common law defense.[7] The *Central Housing* decision leaves other interpretive questions unanswered, including: what constitutes a complaint to a landlord under the new common law rule,[8] and how or why the statutory and common law retaliatory eviction protections involve different burdens of proof.[9]

Part I of this Note will seek to describe the *Central Housing* decision. In describing how *Central Housing* came to be, Part I will introduce the two Minnesota statutes that provide retaliatory eviction defenses. Part II will consider how *Central Housing* fits within the policy justifications for retaliatory eviction statutes and historical context of housing reform. Part II argues that retaliatory eviction protections are fundamental to housing codes, and they allow for the tenant enforcement of housing codes. Part II will summarize the state of Minnesota retaliatory eviction law, highlighting the lack of uniformity post-*Central Housing* and the unanswered facets of the common law defense. Part III will examine the sufficiency of *Central Housing*, and contrast Minnesota's current laws with other approaches and model code provisions, while analyzing the difficulty of a legislative or judicial fix to the issues that remain unanswered by *Central Housing*.

This Note's aim is to frame the Minnesota court's novel approach in the context of other legal schemes that address retaliatory eviction,[10]

Characteristics and Defendant Tenant Default in a Housing Court, 3 J. EMPIRICAL LEGAL STUD. 121 (2006). *Cf., e.g.*, MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 381 n.8 (2016) (describing low tenant knowledge on the legality of housing discrimination).

7 *See infra* Part III.

8 The question remains whether the new common law remedy functionally protects any tenants besides Olson. *Cf.* Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398, 410 (Minn. 2019) (discussing the common law defense as a gap-filling solution to a legislative drafting problem).

9 *Compare id.* at 409 ("The tenant has the burden to assert the defense and to prove it by a preponderance of the evidence."), *with* MINN. STAT. § 504B.441 (2019) ("The burden of proving otherwise is on the landlord if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint . . . ."), *and* MINN. STAT. § 504B.285 (2019) ("If the notice to quit was served within 90 days of the date of [a protected] act of the tenant . . . the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with [the landlord]."). For the purposes of this Note, MINN. STAT. § 504B.441 will be referred to as the "penalty for complaint" statute and defense in above-the-line discussion. Likewise, MINN. STAT. § 504B.285 will be referred to as the "general eviction" statute and defense in above-the-line discussion.

10 For relatively recent fifty-state surveys of retaliatory eviction protections, see Brian D. Casserly, Note, *Insuring the Effectiveness of Indiana's Landlord-Tenant Laws: The Necessity of Recognizing the Doctrine of Retaliatory Eviction in Indiana*, 46 IND. L. REV. 1317, 1319–22 (2013). *See also* Research Memorandum from Shelly Kurtz & Alice Noble-Allgire, Retaliatory Conduct Under URLTA (2012), https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=91f4035d-c4e8-dacc-1293-5a42252aa7b1 [http://perma.cc/EM3Z-HYA2] (describing state adoption of the URLTA); Annotation,

and to examine the potential effects of *Central Housing* and predict its ineffectiveness in determining future cases. This Note argues that *Central Housing* may have created as many problems as it sought to solve, as the uncertainty and fragmentation of the law will prove detrimental to both parties. Lastly, this Note asserts that clear definitions of protected tenant conduct are necessary for the enforcement of robust housing codes, as shown by the history and development of tenant protections during the tenant rights revolution of the mid-twentieth century.[11]

I. BACKGROUND

A. *Facts and Procedure*

On May 1, 2016, Tenant (hereinafter Olson) and Landlord (Central Housing Association, hereinafter CHA) entered into a residential lease with a term of one year.[12] Olson subsequently made several written complaints to his landlord about the conditions and repairs in the apartment and further complained that a staff member of CHA had harassed and discriminated against both himself and his minor

Retaliatory Eviction of Tenant for Reporting Landlord's Violation of Law, 23 A.L.R.5th 140 (2020) (on variance between state retaliatory eviction protections).

11 This Note advances the argument that modern developments in landlord/tenant law justify attention to retaliatory eviction protections to ensure housing codes can be enforced. *See infra* notes 88–93. In the context of the dual national crises posed by the COVID-19 pandemic and racism (including the murder of George Floyd in Minneapolis), the longstanding government neglect of Black people has become especially visible through recurrent police violence, inadequate economic protections, and mass unemployment (failures exacerbated during COVID-19). *See* Keeanga-Yamahtta Taylor, *Of Course There Are Protests. The State is Failing Black People*, N.Y. TIMES (May 29, 2020), https://www.nytimes.com/2020/05/29/opinion/george-floyd-minneapolis.html [https://perma.cc/VLM3-JQ5Q]. In Minnesota, NIMBYism, racism, and regressive housing laws have contributed to (and, indeed, caused) the growing housing emergency. *See* Alana Semuels, *Segregation in Paradise?*, ATLANTIC (July 12, 2016), https://www.theatlantic.com/business/archive/2016/07/twin-cities-segregation/490970 [https://perma.cc/7CUY-WDH7] (on pervasive segregation in Minnesota). In light of these failings, Minnesota must make changes to its treatment of renters, the housing-insecure, and those without homes: groups that are (across America) disproportionately Black people. *See* DESMOND, *supra* note 6, at 250–52 ("Over three centuries of systematic dispossession from the land created a semipermanent black rental class . . . ."). For a historical look at government and real estate industry policies that undermined Black homeownership, see also KEEANGA-YAMAHTTA TAYLOR, RACE FOR PROFIT (2019). Addressing the flaws in Minnesota's eviction protections is a minor step amidst many that will be necessary to reduce the negative societal effect (and personal trauma) caused by evictions and housing insecurity, both of which stem from state-sanctioned segregation and racism.

12 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 401.

daughter.[13] In January 2017, CHA notified Olson the lease would be terminated early due to alleged breaches of the lease.[14] After receiving the notice, Olson filed a report with the Minnesota Department of Human Rights (MNDHR), alleging discrimination, harassment, and retaliation.[15] In the subsequent trial, a jury found that Olson had materially breached lease terms, and also that CHA's eviction action was in retaliation for Olson's complaints to CHA.[16] The district court awarded possession of the apartment to Olson without specifying the statutory grounds of Olson's retaliation defense.[17]

On appeal, CHA argued that both of the existing tenant-remedy statutes were inapplicable.[18] Minnesota's "penalty for complaint" statute protects tenants from eviction when the eviction is "intended as a penalty for the residential tenant's or housing-related neighborhood organization's complaint of a violation."[19] The Minnesota Court of Appeals interpreted the phrase "complaint of a violation" to mean, exclusively, a tenant-remedies action in court.[20] Because Olson did not make a tenant-remedies complaint in court, his complaints were not protected by the provisions of the "penalty for complaint" statute.[21]

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13 *Id.* Olson specifically alleged that a CHA maintenance worker had harassed his minor daughter who is a Muslim and wears a hijab, based on race and religion, and that CHA discriminated against him based on his disability. *Id.*

14 *Id.* Olson alleged that he received notice of the alleged breaches only after he had complained to CHA about his daughter's harassment. Olson's alleged breaches of the lease seem minor. *Id.* ("[D]isruptive behaviors by members of Olson's household, failing to list all family members on Olson's [apartment] application, an unpaid balance of $275.91, multiple late payments of rent, and false information on the application of Olson's live-in aide.").

15 *Id.*

16 *Id.* CHA argued that Olson was ineligible for the retaliation defense in a post-trial motion for judgment as a matter of law. *Id.* The district court did not identify which of Olson's actions triggered statutory protection from retaliation, but Olson's complaint to MNDHR occurred after CHA initiated the eviction, so the district court likely relied on Olson's written complaints to CHA.

17 *Id.* (noting that the district court "apparently based [its ruling] on the existence of a retaliation defense under Minn. Stat. § 504B.285, subd. 2, and Minn. Stat. § 504B.441.").

18 The statutory tenant retaliation defenses are found in MINN. STAT. § 504B.285, subdiv. 2 (2019), and MINN. STAT. § 504B.441 (2019). Cent. Hous. Assocs., LP v. Olson, 910 N.W.2d 485, 486–87 (Minn. Ct. App. 2018).

19 § 504B.441 ("A residential tenant may not be evicted, nor may the residential tenant's obligations under a lease be increased or the services decreased, if the eviction or increase of obligations or decrease of services is intended as a penalty for the residential tenant's or housing-related neighborhood organization's *complaint of a violation*.") (emphasis added).

20 The Minnesota Court of Appeals found that only tenants who initiate a tenant-remedies action via formal complaint are protected. *Cent. Hous. Assocs., LP*, 910 N.W.2d at 490 ("The term does not include a report to a state civil rights agency.").

21 *Id.*

Minnesota's other statutory retaliation provision is found in the "general eviction" statute, which provides protection to tenants whose tenancy is terminated either as "a penalty for the [tenant]'s good faith attempt to secure or enforce rights" or as "a penalty for the [tenant]'s good faith report to a governmental authority of the [landlord]'s violation . . . ."[22] The Court of Appeals found that the "general eviction" statute was inapplicable because it only protects tenants evicted via notice to quit.[23] Notices to quit are served to end the tenancies of tenants-at-will or holdover tenants,[24] while notices to terminate are served to terminate the lease of (usually breaching) tenants.[25] In sum, the Court of Appeals found that the "penalty for complaint" defense only protects tenants who have filed a complaint in district court, and the "general eviction" defense only protects tenants holding over after a "notice to quit" (ending their tenancy) or who otherwise do not have a lease.[26]

On appeal to the Supreme Court, Olson did not challenge the inapplicability of the "general eviction" statute, but argued that he was protected from a retaliatory eviction under either the "penalty for complaint" statute or the common law.[27] Olson asserted that "complaint," as found in the statute, is an inclusive term that encompassed complaints in a formal setting (to a court or city/state agency) *and* complaints to a landlord regarding a materially breached condition in the residence.[28] CHA, conversely, argued that "complaint,"

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22 MINN. STAT. § 504B.285, subdiv. 2 (2019).

23 *Cent. Hous. Assocs., LP*, 910 N.W.2d at 488 (noting that the statute "expressly distinguishes between a tenancy that is terminated based on a breach of the lease and a tenancy that is terminated by a notice to quit") (quoting Cloverdale Foods of Minn. v. Pioneer Snacks, 580 N.W.2d 46, 51 (Minn. Ct. App. 1998)).

24 *See* Cloverdale Foods of Minn. v. Pioneer Snacks, 580 N.W.2d 46, 51 (Minn. Ct. App. 1998). MINN. STAT. § 566.03 (repealed 1999) expressly differentiated between notice to quit terminations and breach of lease terminations.

25 *Cent. Hous. Assocs., LP*, 910 N.W.2d at 488–89 (on notices to quit and notices to terminate). Because the *Central Housing* court uses the language "notice to quit" and "notice to terminate," this Note has done the same throughout.

26 *Id.* at 491 ("The retaliatory eviction defense described in sections 504B.285 and 504B.441 is available only in the statutorily defined circumstances outlined in those sections."); *see also* Me. Heights LLC v. Hayat, No. A19-1930, 2020 Minn. App. Unpub. LEXIS 940 (Minn. Ct. App. Dec. 14, 2020).

27 Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398, 402 (Minn. 2019). The clear precedent cited by the lower court in *Cloverdale* likely played a role in limiting Olson's appeal to the applicability of MINN. STAT. § 504B.441 (2019). *Cent. Hous. Assocs., LP*, 910 N.W.2d at 489 ("The answer we gave in *Cloverdale* defeats Olson's contention.").

28 § 504B.441 ("[I]f the eviction . . . is intended as a penalty for the residential tenant's . . . complaint of a violation."); *Cent. Hous. Assocs., LP*, 929 N.W.2d at 403.

within the "penalty for complaint" statute, exclusively meant a complaint in the district court.[29]

B. *Holding*

The entirety of the Minnesota Supreme Court agreed that the "penalty for complaint" statute did not apply. However, the majority found that "complaint," as used in the statute, means either a formal complaint to a court or a complaint to an agency, such as MNDHR.[30] This interpretation rejected both Olson's argument that any written complaint to a landlord qualified, and the Minnesota Court of Appeals' ruling that "complaint" referred only to a tenant-remedies action in a district court.[31] The majority opinion thoroughly examined the grammatical construction of the statute and parsed the definition of the word "complaint," and ultimately found multiple reasonable definitions of "complaint" in the statute.[32] Faced with an ambiguous text, the Minnesota Supreme Court turned to the use of canons of construction to determine the intent of the legislature, finding that the legislature's intent was to protect tenants from retaliation when (and only when) they had filed a complaint in court or with a governmental agency.[33] The supreme court concluded that the legislature did not intend to protect tenants if they had only written a complaint to their landlord.[34] However, the majority disagreed with the interpretation of the court of appeals that tenants were only protected if they had filed suit in a district court.

As an alternative route to protect Olson, the majority established a common law defense of retaliatory eviction, allowing Olson to prevail.[35] The majority described the common law remedy as a gap-filling provision fixing a potentially inadvertent failure of the legislature.[36]

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29 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 403.

30 *Id.* at 408.

31 *Id.* ("[W]e conclude that Minn. Stat. § 504B.441 prohibits retaliation for a residential tenant's complaint of a violation to a government entity, such as a housing inspector, or commencement of a formal legal proceeding.").

32 *Id.* at 403–08.

33 *Id.* at 408 ("Applying the most reasonable interpretation to the facts of this case, Olson did not have a defense of retaliation . . . .").

34 *Id.* Both the majority and the dissent suggest that the absence of overt legislative action on this type of complaint proves its intentional dis-inclusion. This contradicts the notion that the gap was potentially inadvertent. *Id.* at 409–11.

35 *Id.* at 409–10.

36 *See id.* at 409 ("A common-law defense fills a gap that the Legislature left open, perhaps inadvertently.").

However, the court failed to describe the remedy with much specificity, except as necessary to resolve the current case.[37]

Chief Justice Gildea, dissenting, disagreed with the majority on both statutory and common law grounds. Agreeing with the entirety of the court of appeals opinion, Chief Justice Gildea argued against the use of canons of construction to determine legislative intent in a clear case.[38] On the issue of statutory interpretation, Chief Justice Gildea believed that the "penalty for complaint" statute is unambiguous, meaning only the commencing of a formal lawsuit.[39] Further, Chief Justice Gildea argued that the expansion of common law remedies was unjustified.[40]

The result in *Central Housing* blurred the boundaries of protected tenant activity, depriving tenants and landlords of the security of certain legal footing and increasing the likelihood of tenant-right underutilization.[41] With the original purpose for retaliatory eviction protections in mind, *Central Housing*'s result is counterproductive and confusing. As Minnesota faces a new wave of the tenant rights revolution, the courts and legislature must work together to provide tenants with a clear and usable protection from retaliation that abandons *Central Housing* and re-centers retaliation protections on their original purpose as a tenant tool for enforcing housing codes.

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37 The court nonetheless suggested that the result would encourage non-judicial reconciliations. *Id.* ("Recognizing a common-law defense of retaliation also encourages tenants and landlords to resolve their disputes directly . . . .").

38 *Id.* at 412 n.2 (Gildea, C.J., dissenting) (disagreeing about both the ambiguity required to justify the use of canons of construction and the use of the canons even if the statute were ambiguous).

39 *Id.* at 410, 412 ("[The] majority's interpretation [of Minn. Stat. § 504B.441] is inconsistent with the plain language of the statute. . . . I interpret 'complaint' to mean the same thing in section 504B.441 as it does literally everywhere else in the rest of the Tenant Remedies statutes: a civil complaint in a tenant-remedies action under Minn. Stat. § 504B.395.").

40 *Id.* at 410, 413 (arguing that "the majority's creation of a retaliatory-eviction defense is inconsistent with our precedent").

41 *See infra* Section II.A.

II. ANALYSIS

A. *Retaliatory Eviction: Historical Devlopment and Reform*

Retaliatory eviction,[42] as a defense, was first recognized in the United States in *Edwards v. Habib*,[43] a 1968 Washington, D.C. case involving a tenant who was evicted for complaining about their landlord's housing code violations.[44] During the second half of the twentieth century, cities and municipalities had developed increasingly complex housing codes in an attempt to protect growing numbers of apartment-dwelling tenants.[45] Chief among these reforms was the development of the implied warranty of habitability,[46] a non-waivable requirement that landlords maintain their rented properties at

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42 In the United Kingdom, retaliatory evictions are often referred to by the more sinister-sounding term "revenge eviction." *See* Melissa T. Lonegrass, *Eliminating Landlord Retaliation in England and Wales—Lessons from the United States*, 75 LA. L. REV. 1071, 1076 (2015) (contrasting tenant protections in the U.S. and the U.K.); Simon Goodley, *Tenants in England Not Being Protected from Revenge Evictions, Study Finds*, GUARDIAN (Mar 17, 2019, 8:01 PM), https://www.theguardian.com/society/2019/mar/18/tenants-in-england-not-being-protected-from-revenge-evictions-study-finds [https://perma.cc/2S3C-MCTN]. For a description of how acts of revenge and retaliation allow individual actors to correct perceived wrongs, see generally Vincy Fon & Francesco Parisi, *Revenge and Retaliation*, *in* THE LAW AND ECONOMICS OF IRRATIONAL BEHAVIOR 141, 144, 163–64 (Francesco Parisi & Vernon L. Smith eds., 2005) (noting that "[t]he fear of proportional retaliation can support better social outcomes").

43 Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968); *see also* Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 533 (1984); Lonegrass, *supra* note 42, at 1094–95.

44 *Edwards*, 397 F.2d at 700 n.40.

45 *See* Roger A. Cunningham, *The New Implied and Statutory Warranties of Habitability in Residential Leases: From Contract to Status*, 16 URB. L. ANN. 3, 13–14 (1979); *see also* Michael A. Brower, *The "Backlash" of the Implied Warranty of Habitability: Theory vs. Analysis*, 60 DEPAUL L. REV. 849, 855 (2011); Rabin, *supra* note 43, at 519–21, 540–54 (highlighting the effect of other social change movements on housing reform, including the civil rights movement and the Vietnam War, as well as changes to legal theory on property rights). Professor Rabin further opined that the midcentury reforms drastically altered the dynamics of landlord-tenant law. *Id.* at 519 ("The residential tenant, long the stepchild of the law, has now become its ward and darling.").

46 *See* Rabin, *supra* note 43, at 521–27 (discussing the advent of the implied warranty of habitability); *see also* Brower, *supra* note 45, at 889–94 (advocating for allowing waiver of the warranty to lower rents and suggesting that the proscription on waiver has caused "harm without a corresponding benefit"); Cunningham, *supra* note 45, at 62–74.

habitable conditions.[47] The warranty of habitability and related reforms bolstered tenant rights on paper, but their result was largely mixed.[48]

Many landlords saw new tenant protections, especially the warranty of habitability, as a threat to profits and, in turn, attempted to pass their cost onto tenants.[49] Without any retaliation protections, landlords could avoid code enforcement by evicting tenants who complained about violations.[50] Common law protections offered tenants little recourse, so municipalities began adopting protections, akin to *Edwards,* which advanced the idea that courts should not assist a landlord in evicting a tenant who attempted to secure their legal rights through complaining of a housing code violation.[51] The growth of tenant rights therefore necessitated retaliatory eviction protections,[52] as without retaliation protections, newly enacted housing codes would become inoperative.[53]

Even after courts and legislatures enacted retaliation protections, loopholes remained, and there was extreme variance between the protections.[54] One significant carve-out existed in many states wherein

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47 *Compare Edwards*, 397 F.2d 687, *with* Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970) (adopting the implied warrant of habitability). *See* Matthew Desmond & Monica Bell, *Housing, Poverty, and the Law*, 11 ANN. REV. L. & SOC. SCI. 15 (2015); Brower, *supra* note 45, at 849 (describing the implied warranty of habitability as a "dramatic departure from the common law landlord-tenant relationship"); David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CAL. L. REV. 389, 391-94 (2011); Cunningham, *supra* note 45, at 59 (discussing "[s]imple [w]arranty of [h]abitability [s]tatutes" such as MINN. STAT. § 504.18 (1978)); Rabin, *supra* note 43, at 521–27.

48 *See* DESMOND, *supra* note 6, at 44–45, 349 n.1 (on how enforcing housing codes can cause the eviction of the vulnerable to rectify their "violations"); Super, *supra* note 47, at 451–63.

49 For a discussion on how and when the cost of reforms are passed onto tenants, see DESMOND, *supra* note 6, at 305–08; Desmond & Bell, *supra* note 47, at 21–22.

50 *See* Deborah Hodges Bell, *Providing Security of Tenure for Residential Tenants: Good Faith as a Limitation on the Landlord's Right to Terminate*, 19 GA. L. REV. 483, 484–85 (1985).

51 *See Edwards*, 397 F.2d at 701 (discussing the need for judges to see evictions in the context of unpalatable landlord motives); Lauren A. Lindsey, Comment, *Protecting the Good-Faith Tenant: Enforcing Retaliatory Eviction Laws by Broadening the Residential Tenant's Options in Summary Eviction Courts*, 63 OKLA. L. REV. 101, 108–10 (2010); Bell, *supra* note 50, at 483, 493–501 (discussing retaliation and discrimination protections as limitations on the landlord's "absolute right of termination" under the common law).

52 *See Edwards*, 397 F.2d at 700 ("Effective implementation and enforcement of the [housing] codes obviously depend in part on private initiative in the reporting of violations."); Cent. Hous. Assoc., LP v. Olson, 929 N.W.2d 398, 409 (Minn. 2019).

53 *See Edwards*, 397 F.2d at 700; George M. Armstrong, Jr. & John C. LaMaster, *Retaliatory Eviction as Abuse of Rights: A Civilian Approach to Landlord-Tenant Disputes*, 47 LA. L. REV. 1, 4 (1986) ("The effectiveness of a housing code's administrative remedies . . . may depend upon the willingness and ability of tenants to report violations.").

54 *See, e.g.*, Cunningham, *supra* note 45, at 131–38 (surveying protections granted by different state reforms); Casserly, *supra* note 10, at 1326–29.

a landlord reserved the right to evict tenants,[55] even retaliatorily, if there was a tenant breach of lease.[56] Complaining tenants were also not protected when a landlord proved that no code-violating conditions existed, or when landlords proved their motives were not *purely* retaliatory.[57] Eventually, however, many jurisdictions codified a retaliation defense broad enough to protect most tenants who made a formal complaint of violation of law or breach of lease.[58]

Like many other states, Minnesota first adopted a statute to prevent retaliatory evictions during the early 1970s.[59] The current "general eviction" statute reproduces the original Minnesota statute, Section 566.03, without significant changes to the language.[60] The Minnesota Supreme Court interpreted Section 566.03 in *Parkin v. Fitzgerald*, and characterized the retaliation defense it provided as broad and capable of giving life to Minnesota's growing housing codes.[61] Much like the *Edwards* court in Washington, D.C., the *Parkin* court understood retaliatory eviction protections as a necessary division of the State's housing code enforcement.[62] The Minnesota legislature's

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55 *See* Mack A. Player, *Motive and Retaliatory Eviction of Tenants*, 1974 U. ILL. L.F. 610, 613–16. Landlords could also wait to evict tenants once the presumptive period for retaliation was up. *Id.* at 616. Even the *Edwards* court anticipated that a landlord could and would eventually evict a tenant, so long as the "illegal purpose is dissipated" before the eviction. *Edwards*, 397 F.2d at 702.

56 *See, e.g.*, Dickhut v. Norton, 173 N.W.2d 297, 301–02 (Wis. 1970) (requiring that a tenant prove that the eviction was "for the sole purpose of retaliation"). High bars on retaliation protections, coupled with relative low payoffs for successful tenants, contribute to a lack of use and success of the defense. *See* Super, *supra* note 47, at 437–38.

57 Player, *supra* note 55, at 613, 627–29.

58 *See, e.g.*, Lake View Towers Residents Ass'n v. Mills, 2016 IL App (1st) 143621-U (Ill. App. Ct. 2016) (broadly interpreting Illinois law to protect tenants from retaliation when their breaches are curable); 765 ILL. COMP. STAT. 720/1 (1963).

59 *See* MINN. STAT. § 566.03 (1971) (repealed 1998); *see generally* Cunningham, *supra* note 45, at 131–35.

60 *Compare* MINN. STAT. § 566.03, subdiv. 2 (1971) (repealed 1998), *with* MINN. STAT. § 504B.285, subdiv. 2 (2019).

61 MINN. STAT. § 566.03, subdiv. 2 (1971) (repealed 1998); Parkin v. Fitzgerald, 240 N.W.2d 828 (Minn. 1976).

62 *See Parkin*, 240 N.W.2d at 831 ("When the withholding of rent or report to housing authorities brings the inevitable notice [to quit], the tenant is forced to put up with substandard or illegal housing conditions or leave. Confronted with this choice in the face of a tight housing market and no better conditions elsewhere, he will too often choose silence and acquiescence, frustrating legislative polices designed to ensure adequate and tenantable housing within the state."); *see also* Cent. Hous. Assoc. v. Olson, 929 N.W.2d 398, 409 (Minn. 2019) (discussing both the "hundreds of thousands of rental units . . . in the metropolitan area" and the "strong" public interest in preventing hazardous conditions in rental units); Player, *supra* note 55, at 611.

"general eviction" statute, as interpreted by *Parkin*, overturned the common law, much like *Edwards*.[63]

Post-*Parkin*, the general eviction defense has remained the same, protecting tenants from evictions "intended in whole or in part as a penalty for [a tenant]'s good faith attempt to secure or enforce rights under lease or contract . . . [or a] good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code."[64] Subsequently, a "penalty for complaint" statute was added, which protects any tenant from retaliation "for . . . [a] complaint of a violation."[65] While not obvious on either statute's face, the "penalty for complaint" defense applies to all tenants, while the "general eviction" defense only applies to notice to quit tenants.[66] The Minnesota legislature may have intended this additional statute as a mechanism to provide a narrower protection for notice to terminate tenants while reserving discretion for landlords seeking to remove breaching tenants.[67] Neither statute explicitly mentions protection for a complaint made directly to a landlord, but under the "general eviction" defense, a complaint directly to a landlord may be considered an attempt to secure or enforce rights "under the laws of the state."[68]

Central Housing's interpretation of the term "complaint" as used in the "penalty for complaint" statute is applicable to notice to terminate tenants—in other words, tenants who have allegedly breached. While the Minnesota Supreme Court believed both Olson and CHA offered reasonable interpretations of the term "complaint," the *Parkin* and *Edwards* courts contextualized retaliation protections as

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63 Minnesota common law clearly established that an uninhabitable premise, and by extension a complaint about an uninhabitable premise, was "no defense" to an eviction. *See* Peterson v. Kreuger, 70 N.W. 567, 567 (1897). In 1971, the Minnesota Supreme Court opted to not extend protections from retaliation to a tenant through the common law. *See* Olson v. Bowen, 192 N.W.2d 188 (Minn. 1971). *Parkin* noted three "important aspects" changed by MINN. STAT. § 566.03 (1971). 240 N.W.2d at 831–32. ("First, it encompasses a wide range of tenant activity, provided such activity is undertaken in good faith for the purpose of enforcing contractual or statutory rights. Second, it does not require an extraordinary burden of proof, but only the usual civil burden—proof by a fair preponderance of the evidence. Third, recognizing the difficulties of proof of matters of motive and purpose, it aids the tenant with a presumption of retaliation which the landlord must rebut if the notice to quit was served within 90 days of the tenant's protected activity.").

64 MINN. STAT. § 504B.285, subdiv. 2 (2019).

65 MINN. STAT. § 504B.441 (2019).

66 Cloverdale Foods of Minn., Inc. v. Pioneer Snacks, 580 N.W.2d 46 (Minn. Ct. App. 1998).

67 *Cf.*, MINN. STAT. § 504B.285, subdiv. 4 (2019). This carve-out, which makes the retaliatory eviction defense under § 504.285, subdiv. 2 inapplicable with regard to the termination of a tenancy for a violation of a lawful material provision of the lease, seems to expressly allow landlords discretion to remove tenants who breach. *Id.*

68 § 504B.285, subdiv. 2 (2019).

important not only to protect specific tenant acts, but also to encourage landlord code compliance, and to arm tenants with that power. In this sense, CHA violated the statute's aim (of protecting lawful tenant activity) by attempting to retaliate the lawful concerns raised in Olson's "complaint" letter through an eviction. In practice, *Central Housing*'s statutory interpretation allows CHA-landlords to have eviction papers ready to serve on any notice to terminate a tenant who voices dissent, and, so long as that landlord beats them to court, the tenant has no statutory retaliation protections, and is left to use the common law. This formalistic and non-textual outcome weakens the law and undermines the justifications for retaliation protections found in the tenants-rights revolution cases.[69]

The housing reforms of the 1960s and 1970s have often been criticized as a failure for being insufficiently protective of tenants, being inefficient, or for limiting the supply of available housing.[70] Likewise, retaliatory eviction doctrine has been blunted and weakened in the fifty years since its advent.[71] However, the aims of the tenant-rights reform movement are again at the forefront of political discussion in the context of a severe housing crisis throughout the United States.[72] The reemergence of the same issues that predicated the reforms has already spurred housing and property law changes in Minnesota and the rest of the Midwest.[73] More revolutionary proposals to address this crisis include addressing housing as a right,[74] overhauling and expanding

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69 *Compare* Parkin v. Fitzgerald, 240 N.W.2d 828, 831–32 (Minn. 1976) (identifying the case as the court's "first opportunity to authoritatively construe [the] retaliatory eviction statute" and articulate the goals of the legislature), *with* Cent. Hous. Assoc. v. Olson, 929 N.W.2d 398, 405–09 (Minn. 2019) (narrowly interpreting the statute using canons of construction).

70 *See, e.g.,* Brower, *supra* note 45, at 865, 894 (discussing the way the implied warranty of habitability failed to improve conditions, while not precluding that reforms helped tenants as a class); Super, *supra* note 47, at 439–61 (discussing the failures of the "new regime" more broadly); Desmond & Bell, *supra* note 47, at 16–17, 21–22 (discussing the waning influence of rent control mechanisms and debates about code enforcement).

71 *See* Lonegrass, *supra* note 42, at 1123 (discussing the "practical success of most retaliatory eviction regimes in the United States" as being "highly questionable").

72 *See, e.g.*, Brenda Richardson, *America's Housing Affordability Crisis Only Getting Worse* (Jan. 31, 2019, 7:48 AM), https://www.forbes.com/sites/brendarichardson/2019/01/31/americas-housing-affordability-crisis-only-getting-worse/#53ff359e104b [https://perma.cc/VCK2-6VGU]; *The Gap: A Shortage of Affordable Rental Homes*, NAT'L LOW INCOME HOUS. COAL., https://reports.nlihc.org/gap [https://perma.cc/9EM9-F8DZ] ("No [s]tate [h]as an [a]dequate [s]upply of [a]ffordable [r]ental [h]ousing for the [l]owest [i]ncome [r]enters."). Renter rights in the context of the COVID-19 pandemic have further pressed this issue. *See supra* note 11.

73 For a discussion of the causes of the tenant rights revolution of the mid-twentieth century, see generally Rabin, *supra* note 43. For a modern view on the ills of the housing market, echoing the 1970s explanations of Professor Rabin, see DESMOND, *supra* note 6, at 3–5.

74 For an example of a constitutional-right sourced discussion of tenant rights, see Frank I. Michelman, *Property as a Constitutional Right*, 38 WASH. & LEE L. REV. 1097, 1114 (1981)

federal public housing voucher programs,[75] and eliminating no-cause evictions.[76] To differing degrees, recent plans incorporating these ideas have made headway at both the state and national levels.[77] Many of these proposals take the form and function of classic housing codes, such as those created in the revolution of the mid-twentieth century, albeit of a different scope.[78] While this movement has its supporters, its work has also faced recurrent critiques since the mid-century reforms.[79] Some scholarship posits that stronger protections from retaliation

(proposing that "a tenant with an expired lease might have constitutionally cognizable property interests at stake to be legislatively counterposed against those of the building owners"); *see also* DESMOND, *supra* note 6, at 293–313.

75 *See* DESMOND, *supra* note 6, at 293–313; Andrea J. Boyack, *Responsible Devolution of Affordable Housing*, 46 FORDHAM URB. L.J. 1183, 1242–54 (2019).

76 *See generally* Richard E. Blumberg & Brian Quinn Robbins, *Beyond URLTA: A Program for Achieving Real Tenant Goals*, 11 HARV. C.R.-C.L. L. REV. 1 (1976).

77 *See, e.g.*, Jonathan Bach, *What Tenants, Landlords Need to Know About Oregon's Statewide Rent Control Law*, STATESMAN J. (Mar. 4, 2019 1:53 PM), https://.statesmanjournal.com/story/news/2019/02/28/what-tenants-landlords-need-know-oregons-rent-control-law/3010007002/NY [https://perma.cc/CGQ7-Y3YN] (describing Oregon's tenant protection law prohibiting no-cause evictions); Peter Dreier, *How California's Tenants Won Statewide Rent Control*, AM. PROSPECT (Sept. 25, 2019), https://prospect.org/infrastructure/housing/how-californias-tenants-won-statewide-rent-control [https://perma.cc/MK6Y-BVSJ] (California law aimed to reduce "arbitrary evictions"); Joshua Silavent, *GA. House Bill Would Help Tenants Fight Retaliatory Evictions Over Repair Complaints*, GAINESVILLE TIMES (Mar. 13, 2019, 11:24 AM), https://www.gainesvilletimes.com/news/ga-house-bill-would-help-tenants-fight-retaliatory-evictions-over-repair-complaints [https://perma.cc/Z6Q3-2MVE]; *see also, e.g.*, *Housing for All*, BERNIE SANDERS, https://berniesanders.com/issues/housing-all [https://perma.cc/UVV6-ZM3M] (describing the Senator's plan to "prevent landlords from evicting tenants for arbitrary or retaliatory reasons"); Patrick Condon, *Rep. Ilhan Omar Proposes $1 Trillion for Affordable Housing*, MINNEAPOLIS STAR TRIBUNE (Nov. 21, 2019, 9:33 PM), http://www.startribune.com/rep-ilhan-omar-proposes-massive-affordable-housing-program/565274002/?om_rid=2931096009&om_mid=534043081 [https://perma.cc/2NCT-2L33] (describing a Minnesota House of Representatives member's proposed program for building affordable homes as part of guaranteeing a right to housing).

78 *See, e.g.*, Housing Stability and Tenant Protection Act of 2019, S. 6458, 2019–2020 Leg, Reg. Sess. (N.Y. 2019) (enacted); Sharon Otterman & Matthew Haag, *Rent Regulations in New York: How They'll Affect Tenants and Landlords*, N.Y. TIMES (June 12, 2019), https://www.nytimes.com/2019/06/12/nyregion/rent-regulation-laws-new-york.html [https://perma.cc/WFA4-U4DP]; *see also* Josh Barbanel, *New York Evictions are Plunging Under New Rent Control Law*, WALL ST. J. (Nov. 26, 2019, 3:03PM), https://www.wsj.com/articles/new-york-evictions-are-plunging-under-new-rent-control-law-11574793114 [https://perma.cc/956Z-SVBR] (discussing the efficacy of recent New York reforms).

79 *See, e.g.*, Peter D. Salins, *Comment on Chester Hartman's "The Case for a Right to Housing": Housing is a Right? Wrong!*, 9 HOUS. POL'Y DEBATE 259, 265–66 (1998) (discussing alternatives to right-based housing policy); Robert C. Ellickson, *The Untenable Case for an Unconditional Right to Shelter*, 15 HARV. J.L. & PUB. POL'Y 17 (1992).

would curb many housing ills without unpalatable shifts in the balance of landlord-tenant rights.[80]

Regardless of the path forward, the stakes are clear: the housing crisis has produced more renters,[81] rising rents and prices for lower values, a shortage of affordable homes,[82] as well as more evictions.[83] Estimates on the numbers of evictions in 2020, due to COVID-19, are sobering.[84] The Twin Cities has been rankled by political fighting about affordable housing, including its ties to racial justice and reform in development and zoning.[85] While both tenant rights and the quantity of affordable units are vital issues,[86] uncontrolled retaliatory evictions pose a risk during periods of reform by allowing for a strengthening of on-paper rights of tenants without effectuating a change in

80 *See, e.g.*, David A. Dana, *An Invisible Crisis in Plain Sight: The Emergence of the "Eviction Economy," its Causes, and the Possibilities for Reform in Legal Regulation and Education*, 115 MICH. L. REV. 935, 948–50 (2017).

81 As mentioned, there are stark racial disparities in renting versus. owning homes. *Reducing the Racial Homeownership Gap*, URB. INST. HOUS. FIN. POL'Y CTR., https://www.urban.org/policy-centers/housing-finance-policy-center/projects/reducing-racial-homeownership-gap [https://perma.cc/BPZ4-SZ2P] (noting a thirty percent gap between Black and white homeownership rates in 2017, a number that has risen since 1960); *see also* DESMOND, *supra* note 6, at 250–52; TAYLOR, *supra* note 11 (discussing government and industry policies that undermined Black homeownership throughout the twentieth century).

82 *See* BRITTANY LEWIS ET AL., THE ILLUSION OF CHOICE: EVICTIONS AND PROFIT IN NORTH MINNEAPOLIS (2019), http://evictions.cura.umn.edu/illusion-choice-evictions-and-profit-north-minneapolis-full-report [https://perma.cc/HAL7-NZE5] (discussing Minneapolis eviction statistics); Greta Kaul, *A Majority of Minneapolis' Households Now Rent Their Homes*, MINNPOST (Mar. 6, 2019), https://minnpost.com/metro/2019/03/a-majority-of-minneapolis-households-now-rent-their-homes [https://perma.cc/HXK4-A2KV].

83 Greta Kaul, *Evictions, On the Rise Nationwide, Don't Affect All Parts of Minneapolis Equally*, MINNPOST (Oct. 25, 2017), https://www.minnpost.com/politics-policy/2017/10/evictions-rise-nationwide-don-t-affect-all-parts-minneapolis-equally [https://perma.cc/7JRV-VGSZ] [hereinafter Kaul, *Evictions on the Rise*] (noting a peak in eviction filings during the foreclosure boom of 2008). In the Twin Cities region, nearly 10,000 eviction filings were filed during 2016, especially in neighborhoods with higher nonwhite populations. *See* LEWIS ET AL., *supra* note 82 (describing the proliferation of evictions in North Minneapolis neighborhoods).

84 *See, e.g.*, Tiffany Bui, *Minnesota's Eviction-Ban Update Carves Out Some Narrow Exceptions*, MINNPOST (Aug. 6, 2020), https://www.minnpost.com/metro/2020/08/minnesotas-eviction-ban-update-carves-out-some-narrow-exceptions [https://perma.cc/2SCS-SLLJ] (estimating 6,000 to 11,000 evictions on hold because of court closures).

85 *See 2040 Goals*, MINNEAPOLIS 2040, https://minneapolis2040.com/goals [https://perma.cc/8G7K-GKG6] (highlighting a 2040 planning goal for "all Minneapolis residents [to] be able to afford and access quality housing throughout the city"); Sarah Mervosh, *Minneapolis, Tackling Housing Crisis and Inequity, Votes to End Single-Family Zoning,* N.Y. TIMES (Dec. 13, 2018), https://www.nytimes.com/2018/12/13/us/minneapolis-single-family-zoning.html [https://perma.cc/VTY2-SJZC] (describing Minneapolis' elimination of "single family zoning" to address the housing crisis, racial inequality, and climate change).

86 NAT'L LOW INCOME HOUS. COAL., *supra* note 72.

enforcement. Across the country, as tenant rights improve,[87] states will need to update the strength of their retaliatory eviction protections to ensure code viability.[88] Lessons learned from the revolution of the landlord-tenant relationship during the 1960s and 1970s inform courts and policymakers about how retaliatory eviction protections can properly vest housing code enforcement power with tenants.[89]

Despite complex housing codes and growing tenant protections, tenants remain largely unaware of their rights under existing laws and often are unrepresented in housing court.[90] This prevents tenants from making knowledgeable decisions about when to fight for possession and when to concede leased residences to the landlord.[91] Failing to ameliorate this phenomenon through clear laws, tenant representation, and/or public education would risk repeating the policy failures of a generation ago.[92] Because of the enforcement function of retaliation protections and a general lack of tenant representation, this Note argues that retaliation protections are only useful when they are accessible or usable to tenants.[93]

B. *State of Minnesota Retaliatory Eviction Law*

Central Housing's holding, that Olson was not protected by either statute but was protected by the common law, opened up a core confusion in Minnesota law. Minnesota now recognizes three routes for

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87 *See supra* notes 76–80.

88 *See* Edwards v. Habib, 397 F.2d 687, 701–02 (1968) (describing the necessity of retaliatory eviction protection to give enforcement power to the enacted housing code).

89 *See generally* Super, *supra* note 47 (describing the failures of tenant-rights reforms); *see also Edwards*, 397 F.2d at 703 (McGowan, J., concurring) ("[H]ousing code promulgation and enforcement clearly cannot be taken to have excluded retaliatory eviction of the kind here alleged as a defense . . . ."). There remains a striking power imbalance between housing enforcement actions (often brought by tenants or, occasionally, administrative agencies) and landlord eviction action enforcement (often vested in the police or other law enforcement personnel).

90 *See* Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 171–73 (2020) (describing the academic consensus on tenant knowledge and the law's inefficacy).

91 Tenants often do not make informed decisions about fighting eviction, because the majority of tenants do not show up to court at all. *See* DESMOND, *supra* note 6, at 304; Engler, *supra* note 4, at 78–81 (discussing the value of representation in making decisions).

92 See *infra* notes 162–64 and accompanying text.

93 The author notes that some of the more severe effects of under-representation have begun to be addressed in Minnesota. *See* Marissa Evans & MaryJo Webster, *Minnesota Eviction Numbers See Dramatic Decline in Past Decade*, MINNEAPOLIS STAR TRIBUNE (Feb. 17, 2020, 8:38 AM), http://www.startribune.com/minnesota-eviction-numbers-see-dramatic-decline-in-past-decade/567930562 [https://perma.cc/DNK6-Y99Y] (attributing the lowering of the high rates of eviction due to the foreclosure crisis to the proliferation of housing-related legal resources).

tenants who wish to assert a defense of retaliatory eviction: (i) the "general eviction" statute;[94] (ii) the "penalty for complaint" statute, [95] and (iii) the common law rule of *Central Housing*. The exact situations that place a tenant into any of these three categories is yet to be fully defined. Neither has any source so far established the State's need for three different protections, when many states have just one.[96]

Of these legal "routes" to retaliation protection, the most straightforward defense is found in the "general eviction" statute,[97] which protects tenants whose tenancies end via notice to quit.[98] In this section, the legislature created a ninety-day burden-shifting provision which prevents a tenant from having to prove retaliatory intent when the termination occurs within ninety days of the attempt by the tenant to exercise their rights.[99] In *Central Housing*, the ninety-day burden-shifting provision was not necessary,[100] but in many situations, the burden-shifting provision is the only way in which a tenant can successfully contest an eviction as retaliatory.[101] The "general eviction" defense, therefore, provides a presumption to the tenant and uses broad language protecting a large range of tenant activities, but is only available to tenants without a lease.[102]

The second route for a Minnesota tenant contesting an eviction is the "penalty for complaint" statute.[103] The "penalty for complaint" statute was definitively construed in *Central Housing*, which held that a tenant is protected by the "penalty for complaint" statute if the tenant,

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94 MINN. STAT. § 504B.285, subdiv. 2 (2019).

95 MINN. STAT. § 504B.441 (2019).

96 *See, e.g.*, Casserly, *supra* note 10.

97 § 504B.285, subdiv. 2 (2019).

98 Termination via notice to quit is reserved for tenants who have not breached their lease, i.e., month-to-month tenancies or at-will tenancies. Cent. Hous. Assocs., LP v. Olson, 910 N.W.2d 485, 488 (Minn. Ct. App. 2018) (citing Cloverdale Foods of Minn., Inc. v. Pioneer Snacks, 580 N.W.2d 46 (Minn. Ct. App. 1998)). This holding was not challenged on appeal. Cent. Hous. Assocs., LP v, Olson, 929 N.W.2d 398, 402 (Minn. 2019) ("Olson did not appeal that determination, so it is not before us.").

99 MINN. STAT. § 504B.285, subdiv. 2 (2019) ("If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff.").

100 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 403 ("Olson shouldered and met the burden of proving that CHA's eviction was retaliatory . . . [and] did not seek to shift the burden of proof to CHA." (alteration in original)).

101 *See* Cunningham, *supra* note 45, at 127 (discussing the Uniform Residential Landlord and Tenant Act); Casserly, *supra* note 10, at 1343 n.241 ("A retaliatory eviction scheme that places a large burden on the tenant . . . renders the protection effectively unusable.").

102 § 504B.285, subdiv. 2 (2019).

103 MINN. STAT. § 504B.441 (2019).

or a housing-related neighborhood organization, has made a complaint to a housing authority, court, or another governmental body.[104] This section also uses a ninety-day burden-shifting mechanism.[105] The "penalty for complaint" statute does not protect tenants who face retaliation for any good-faith attempts that do not constitute a "complaint" of a violation.[106]

C. *Function of the Common Law Remedy*

Central Housing's second holding provides a tenant facing a retaliatory eviction the protection of a common law defense, described as a gap-filler protection that does not replace either existing statute.[107] *Central Housing* expressly allows the common law defense to protect a defendant who has a lease, has complained (in some manner) to a landlord, has breached their lease, and has been served with a notice to terminate.[108] This defense is not so obviously available to any other tenant. *Timberland Partners v. Liedtke*, the first appeals court case to interpret *Central Housing*, makes clear that the *Central Housing* common law defense would not be available to a month-to-month tenant served with a notice to quit, who had complained directly to a landlord.[109] This Note will attempt to address two threshold questions

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104 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 408; Timberland Partners, Inc. v. Liedtke, No. A19-0216, 2019 Minn. App. Unpub. LEXIS 785, at *6–7 (Minn. Ct. App. Aug. 19, 2019); MINN. STAT. § 504B.441 (2019).

105 § 504B.441 (2019).

106 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 408.

107 *Id.* at 409–10 ("We hold that, in this case and going forward, tenants have a common-law defense to landlord evictions in retaliation for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease. The tenant has the burden to assert the defense and to prove it by a preponderance of the evidence.").

108 *Id.* at 401, 410. The order of these factors does not seem to matter.

109 *Liedtke*, 2019 Minn. App. Unpub LEXIS 785, at *6 ("The legislature has provided two separate retaliation defenses: Minn. Stat. §§ 504B.285 (2018) and 504B.441 (2018). And the Minnesota Supreme Court recently recognized a common-law retaliatory-eviction defense in *Cent. Hous. Assocs., LP v. Olson* . . . . But the supreme court limited the common-law defense to 'residential breach-of-lease eviction action[s].' As this eviction action is not for a breach of the lease, the common law defense does not apply here. *Cf. Tereault v. Palmer* . . . ." (quoting *Cent. Hous. Assocs, LP*, 929 N.W.2d at 399) (first citing *Cent. Hous. Assocs., LP*, 929 N.W.2d at 401; and then citing Tereault v. Paulmer, 413 N.W.2d 283, 286 (Minn. Ct. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."))). *Liedtke* is unpublished, and is therefore not precedential under MINN. STAT. § 480A.08. While this tenant could be protected by the "general eviction statute" in MINN. STAT. § 504B.285, the language of MINN. STAT. § 504B.285 also suggests that a "complaint" to a landlord would not trigger protection ("penalty for the defendant's good faith report to a governmental authority"). In short, the Liedtke court held that a complaint to a landlord is not, on its own,

regarding the common law protection: who is protected by the defense; and how will the defense function.

1. Scope of the Common Law Remedy

If and how lower courts will use the common law retaliation eviction defense created by the *Central Housing* court is largely left to be seen. While the case is full of dicta, and itself unpublished, *Liedtke* is relevant insofar as it shows the Minnesota Court of Appeals limiting the Minnesota Supreme Court's new defense to residential breach-of-lease eviction actions, signaling further fracturing of the law.[110] While there are significant differences between *Liedtke* and *Central Housing*, including the believability of the retaliation claim,[111] *Liedtke* signals that if a landlord were to terminate a month-to-month residential tenancy, for example, in retaliation for a written complaint to a landlord, the tenant would not be protected by the new common law defense.[112] While not explicit, *Liedtke* also forecasts the lack of common law protections for commercial tenants.

Liedtke's conclusion that the common law protection only applies to tenants who have made complaints to their landlord directly *and* have breached their lease raises questions about why exactly the *Central Housing* court took the drastic step of creating a new common law defense.[113] The Supreme Court describes the context of the new relief as an extension of protection against the serious harms caused by a family's eviction.[114] This concern is not only exclusive to this class of

protected tenant conduct under the common law defense of *Central Housing*. *Liedtke*, 2019 Minn. App. Unpub. LEXIS 785, at *6.

110 *Liedtke*, 2019 Minn. App. Unpub. LEXIS 785, at *6 ("As this eviction action is not for a breach of the lease, the common law defense does not apply here.").

111 Facts suggest that the tenant Liedtke was highly litigious and sued the landlord, and also may have actually caused nuisance. *See, e.g.*, Liedtke v. Runningen, No. 15-3361, 2016 U.S. Dist. LEXIS 55372 (D. Minn. Apr. 25, 2016). This does not affect the relevant holding in *Liedtke* that only breach of lease tenants can assert the common law defense. More recently, in Me. Heights LLC v. Hayat, 2020 Minn. App. Unpub. LEXIS 940 (Minn. Ct. App. Dec. 14 2020), the Minnesota Court of Appeals again found the Central Housing defense inapplicable, based on a failure to raise that defense separately in district court.

112 *Liedtke*, 2019 Minn. App. Unpub. LEXIS 785, at *6 ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court." (quoting Tereault v. Palmer, 413 N.W.2d 283, 286 (Minn. Ct. App. 1987))).

113 In other words, creating a new defense does not protect all tenants who complain to a landlord directly from retaliation, nor does it extend the same protection to all tenants who have breached their lease. It only provides a retaliation defense for direct complaints for tenants with a lease.

114 Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398, 409 (Minn. 2019).

tenants; all tenants suffer harm from evictions.[115] The law's disparate treatment between tenants who have leases (and have breached), tenants who have leases (and have not breached), and tenants who do not have leases creates confusion more than anything else.[116] More importantly, the difference in statutory protections between classes of tenants unnecessarily complicates the law. The *Central Housing* court failed to read the existing statutes broadly, despite clear public policy reasons to do so (to align Minnesota law with the public policy objectives behind retaliation protections).[117] On the other hand, they failed to read the statutes narrowly, a route to preserving a two-statute system. Instead, the court adopted a third defense in the form of a common law solution contradicting existing precedent.[118]

One way in which the *Central Housing* decision is justifiable is that it introduces change to a stagnant area of law. Despite the existence of the current statutes, publicized cases seem to suggest that Minnesota landlords have overseen systemic code violations and retaliation.[119] And

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115 Non-breaching tenants with a lease may still suffer retaliatory treatment if the landlord decides not to renew a lease. This is not retaliatory eviction per se, but constitutes retaliation within a discussion of policy justifications.

116 *See supra* notes 55–58 and accompanying text. This distinction is not new, it existed in *Cloverdale*. Cloverdale Foods of Minn., Inc. v. Pioneer Snacks, 580 N.W.2d 46, 51 (Minn. Ct. App. 1998). *Central Housing* represents another confusing step along the same path. Even if this does not directly affect landlord or tenant behavior, the varied retaliation protections undermine clarity without any accompanying policy justifications, doing no better to protect tenants or landlords than a clear and usable "one-size-fits-all" system would. There is also a conceivable possibility that either landlords or tenants could take advantage of the law's confusion (to shirk responsibilities).

117 For an example of a Minnesota court reading eviction protections broadly to accomplish public policy goals, see Barnes v. Weis Mgmt. Co., 347 N.W.2d 519 (Minn. Ct. App. 1984). In *Barnes*, the Court of Appeals used the predecessor "general eviction" defense (MINN. STAT. § 566.03) to deny an eviction based on racial discrimination. Tenants who have been discriminated *and* retaliated against (such *Barnes* and *Olson*) are especially in a position to benefit from strong (and clear) tenant protections. The *Barnes* court noted that the issue of discrimination was not in front of it, but went on to describe why discrimination was likely. However, the court relied on the retaliation statute for its remand, so its relevance (and parallels) to *Central Housing* are unmistakable. *Barnes*, 347 N.W.2d at 522 ("The following accumulation of evidence raises a colorable claim that the eviction may have been in retaliation for the Barneses act of renting . . . ."). Note that neither the common law defense found in *Central Housing*, nor the "penalty for complaint statute" of MINN. STAT. § 504B.441 existed at the time of the *Barnes* decision.

118 Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398, 410 (Minn. 2019) (Gildea, C.J., dissenting).

119 *See* Randy Furst & Eric Roper, *Fed-Up Tenants Take Major Minneapolis Landlord to Trial Over Violations*, MINNEAPOLIS STAR TRIB. (Aug. 16, 2016, 2:27 PM), http://www.startribune.com/tenants-take-major-minneapolis-landlord-to-trial/371856081 [https://perma.cc/Q5X4-3L8S] (noting thousands of housing code violations and a court finding of retaliation regarding one landlord). *See, e.g.*, Marissa Evans, *North Minneapolis Landlord Prepares for Fight with Minnesota Attorney General*, MINNEAPOLIS STAR TRIB. (Dec. 9, 2019, 8:41

yet, tenants remain unlikely to avoid eviction.[120] While most American states have statutory schemes that protect tenants from landlord retaliation, provide remedies for dangerous or discriminatory conditions, and allow for retaliation-free reporting of conditions to government bodies,[121] few states protect tenants from landlord retaliation through the common law.[122] In whole, very few states have a stand-alone defense to retaliatory eviction under the common law, unless a common law defense arose before any retaliation statute was codified.[123] No other state has explicitly adopted a separate common law remedy when there exists one or multiple statutory defenses. In general, very few states rely heavily on common-law development in landlord/tenant law.[124]

2. Mechanism of the Common Law Protection

Despite the seeming breadth of the combined statutes, *Central Housing* created a common law function separate from either statue. The main difference between the common law and the statutes is that the common law defense requires the tenant alleging retaliation to shoulder the burden of proving a retaliatory motive.[125] While the original retaliation statute provided a clear, albeit limited, defense to

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PM), http://www.startribune.com/north-minneapolis-landlord-prepares-for-fight-with-minnesota-ag-office/566004971/?om_rid=2931096009&om_mid=565585353 [https://perma.cc/CWU6-3JD2]; Marissa Evans, *Tenants of Embattled Minneapolis Landlord get Temporary Reprieve From Eviction*, MINNEAPOLIS STAR TRIBUNE (Sep. 16, 2019: 10:23 PM), http://www.startribune.com/frenz-tenants-get-temporary-reprieve-from-eviction/560533912 [https://perma.cc/8DK2-UB4C] (describing a fight against improper evictions that led to a landlord's fraud conviction); Chao Xiong, *Former Minneapolis Landlord Stephen Frenz Convicted of Perjury*, MINNEAPOLIS STAR TRIB. (Oct. 18, 2019, 6:57 PM), http://www.startribune.com/former-minneapolis-landlord-stephen-frenz-convicted-of-felony-perjury/563394222 [https://perma.cc/HKJ4-TPLT].

120 *See* HOMELINE, EVICTIONS IN GREATER MINNESOTA 3 (2018), https://homelinemn.org/wp-content/uploads/2018/06/Evictions-in-Greater-Minnesota-Report-with-Appendix.pdf [https://perma.cc/5UY2-FC2C] ("More than three out of four evictions filed ended in tenant displacement . . . .").

121 *See generally*, Casserly, *supra* note 10; Annotation, *supra* note 10 (describing variance between state retaliatory eviction protections).

122 This is likely because of how harshly the common law treated tenants until it was largely reoriented by state legislatures in the 1960s and 1970s. *See* Rabin, *supra* note 43, at 519.

123 California, for example, had retaliatory eviction protections established via common law before a statutory protection existed. This common law defense is occasionally still asserted. *See* Glaser v. Meyers, 187 Cal. Rptr. 242 (1982).

124 Casserly, *supra* note 10, at 1320 n.29.

125 *Compare* Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398 (Minn. 2019), *with* MINN. STAT. § 504B.285 (2019), *and* MINN. STAT. § 504B.441 (2019).

retaliatory evictions, tenants in Olson's situation now (facing retaliatory evictions due to alleged breaches) have to rely on the common law.[126] Even if these tenants have not substantively lost rights, their burden of proof is now higher. If the Minnesota Supreme Court had ruled that a tenant who complains directly to a landlord of a violation were protected from retaliation under either statute, these tenants would have access to a burden-shifting mechanism with a ninety-day period of presumptive retaliation.[127] However, in "filling" the statutory gap, the court left *Olson*-class tenants to prove a retaliatory motive on their own. When there is a documented complaint, the presumption that an eviction is retaliatory is a vital tool in assisting tenants in asserting a retaliation claim.[128] The *Central Housing* ruling does not grant those presumptions under the common law.

3. Practical Problems with Administration

The Court's common law remedy also has an undefined scope and focus.[129] It is unclear whether the common law remedy is intended to effect the intention of the legislature (correcting a mistake) or public policy goals (protecting vulnerable tenants); and whether it protects a broad swath of tenants or tenants in only the specific circumstances in *Central Housing*.[130] *Central Housing* additionally raises questions about the new burden of proof and what issues might reach a jury. These practical considerations will drastically affect and influence whether the combined retaliation protections of Minnesota law are effective in protecting tenants from retaliation and whether those protections will adequately regulate the conduct of potentially retaliatory landlords.

One issue in administration that the court may have to consider is the use of juries. In Minnesota, as in many states, certain housing issues reach a jury.[131] With the new *Central Housing* common law defense, it

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126 *Compare Cent. Hous. Assocs., LP*, 929 N.W.2d at 409, *with* Parkin v. Fitzgerald, 240 N.W.2d 828, 832–33 (Minn. 1976).

127 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 405 (noting that reading "complaint" to encompass complaints to a landlord is a reasonable reading).

128 For a detailed description and critique of the function of motive and presumption in retaliatory eviction, see Player, *supra* note 55, at 620–29.

129 *See supra* Section II.C.1.

130 The court, if it announced a public policy decision to read retaliatory eviction protections broadly, may have accomplished a more direct solution without creating a new defense. *See infra* notes 181–83 and accompanying text.

131 For example, "[t]he *materiality* of a breach is a question of fact" and can be tried to a jury in all cases. Hous. & Redevelopment Auth. v. Tesfaye, No. A09-997, 2010 Minn. App. Unpub.

is unclear what aspects, if any, will reach a jury. The factual determination of whether or not a complaint was actually made could theoretically be tried before a jury rather than a judge. Despite this, the court in *Central Housing* did not address what may be a huge diversity of direct complaints to a landlord. There is no clear description in *Central Housing* of what constitutes a complaint to the landlord under the common law.[132] If an *Olson*-class tenant expressed verbal dissatisfaction to a landlord, the tenant may ask a jury to decide if the complaint was sufficient to trigger protection from retaliation.[133] Because electronic communication is ubiquitous in modern landlord-tenant relationships, some of the concerns which could justify a limitation on non-written complaints may be allayed by technology.[134] It may be increasingly easy for a tenant to provide evidence of an electronic complaint via text or email to a landlord or building supervisor. If a jury is to decide whether or not a tenant made a protected complaint to a landlord based on electronic records, landlords may justifiably worry about and limit the types of communication that could trigger retaliation protections. However, *Central Housing* does not raise these issues, and tenants who electronically complain to their landlord may or may not be protected under the ruling. Under the common law, therefore, *Central Housing* could broaden the definition of "complaint" to *any* expression of dissatisfaction.[135]

A second administrative problem for the common law defense is the odd incentive structure for landlords who wish to avoid a tenant receiving a presumption of retaliation.[136] Because landlords who wish

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LEXIS 397, at *11 (Minn. Ct. App. May 4, 2010) (emphasis added); *see also* Cloverdale Foods of Minn., Inc. v. Pioneer Snacks, 580 N.W.2d 46, 49–50 (Minn. Ct. App. 1998).

132 This is the question that the court sought to answer vis-à-vis the intent of the legislature. *Cent. Hous. Assocs., LP*, 929 N.W.2d at 402.

133 In *Central Housing*, the tenant "complained" in a written letter to the landlord. *Id.* at 401.

134 In the context of today's landlord-tenant relationships, worries that a court would be unable to establish a presumption of retaliation may be unjustified. Modern tenants may be likely to interact with their landlord (or, especially, landlord corporation) via email, text, or letter, and may have little to no face-to-face interaction. In many settings, therefore, evidence of communication is accessible and easy for a court to weigh. Apps for this exact purpose have become widespread. *See, e.g.*, Jeff Andrews, *The Tenant-Landlord Relationship is Going Digital*, CURBED (Nov. 7, 2018, 2:53 PM), https://www.curbed.com/2018/11/7/18068904/property-management-tools-cozy-avail-zillow [https://perma.cc/8L3R-KFYE] (describing the advent of landlord apps).

135 While typically the Supreme Court will not answer questions not before it, the creation of a new legal defense may be an exceptional situation, justifying ignoring this rule.

136 See *supra* Section II.C.2 for a discussion of the presumptions in the mechanism of the common law. Because of the important role presumptions play in retaliation cases, it is logical for landlords to seek to avoid their use.

to retaliate can shirk the applicability of one statutory defense by alleging breaches, there is little reason why a landlord would not always attempt to allege breaches and seek to evict via notice to terminate.[137] If a landlord can get a notice to terminate to court before the tenant makes a complaint to a government agency, the tenant will be forced to argue the difficult common law defense.[138] Shrewd landlords might respond to any worrisome tenant complaint by alleging breaches, forcing a tenant to bear the burden of an affirmative defense.[139] While this incentive is not new, tenants' lack of access to a presumption of retaliation under the common law defense only exacerbates the incentive.[140] Landlords will correctly determine that the optimal strategic route is to force tenants to defend through the common law.

III. ARGUMENT

A. *Fragmentation and the Purpose of Retaliatory Eviction Protections*

This Note posits that *Central Housing* may have caused more problems than it solved. The court's creation of a new common law defense leaves open new questions and uncertainties that the court does not answer.[141] This Section seeks to examine the fundamental issues with fragmentation in landlord/tenant law. This concern builds on existing and identified concerns about the need for administratively clear standards in the largely unrepresented field of tenant defense.[142]

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137 This is both an administrative concern, as more tenants might be pushed into a more difficult common law defense, and a concern about uniformity. *See infra* Section III.B.3.

138 Consider if, in *Central Housing*, Olson had expressed in his written complaint to CHA that he planned to file a complaint to the MNDHR. If CHA had then given him a notice to terminate before Olson had submitted the complaint, the burden of proof for Olson's complaint would be radically lower than if Olson had submitted the complaint before the notice to terminate. *See Cent. Hous. Assocs.*, 929 N.W.2d at 409. This disparity is arbitrary at best, and perverse at worst.

139 Admittedly landlords will still have to prove a breach if one is alleged. In the aggregate, however, assessments about likelihood of success invariably weigh into landlord decisions about pursuing an eviction. For example, see DESMOND, *supra* note 5, at 129 (suggesting that landlord eviction decisions are "messy and arbitrary," reliant on quick assessments of risk often based on an individual landlord's trust or distrust, influenced by an tenant's gender, race, and sexuality). It follows that landlord assessments about a tenant's likelihood of defending themselves in court would factor into this calculus. Further, it fits that disparities in outcomes for represented and unrepresented parties will deepen as a natural result of confusion within landlord/tenant law. *See generally* Engler, *supra* note 4.

140 *See* Casserly, *supra* note 10, at 1342–43.

141 *See supra* Section II.C.

142 *See supra* Section II.C.3.

In sum, these concerns highlight how the law, as it is, undermines the purpose of retaliation defenses generally and lacks the clarity and straightforwardness necessary to be effectively utilized (in litigation) or relied on (in shaping conduct).

Because retaliatory eviction protections serve a code-enforcement function, a set of retaliation defenses that do not adequately prevent or deter landlord misconduct will prove inadequate to the purpose of retaliation law altogether.[143] Two major problems with the legal framework post-*Central Housing* threaten the value and usefulness of the state's retaliatory eviction protections in a broad sense. First, the inconsistent defense mechanisms may lead to inconsistent outcomes. Second, the complexity of multiple defenses will have a negative effect on the certainty of legal outcomes for both tenants and landlords.[144] These factors together will diminish the conduct-regulating power of the retaliation provisions.

Consider the following three hypothetical tenants who each face retaliation from a landlord. Tenant A is faced with an eviction initiated via notice to quit, in retaliation for A's complaint to the MNDHR about the landlord's illegal harassment based on race/religion (as in *Central Housing*). Tenant B, also a victim of harassment, committed the sort of breaches discussed in *Central Housing*, previously ignored by the landlord, but tallied within the weeks following Tenant B's complaint to the MNDHR. Tenant B is then served with a notice to terminate for breach of lease. Tenant C, a tenant at will, is faced with an eviction in retaliation for her written complaint to the landlord about the same harassment suffered by Tenants A and B.

The questionable approach that the Minnesota courts and legislature have patched together may force each of the three hypothetical tenants to assert a different retaliatory defense to their respective evictions. Tenant A could avail himself of the retaliatory eviction protection found in the "general eviction" statute.[145] Tenant B would be forced to assert a defense under the penalty for complaint statute,[146] as B is foreclosed from using the "general eviction" statute because B was served a notice to terminate.[147] Tenant C may be able to

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143 *See supra* Section II.A (discussing *Edwards*).

144 *See* Timberland Partners, Inc. v. Liedtke, No. A19-0216, 2019 Minn. App. Unpub. LEXIS 785 (Minn. Ct. App. Aug. 19, 2019); *see also* Highland Mgmt. Grp. Inc. v. Moeller, 2020 Minn. App. Unpub. LEXIS 73, at *10 (Minn. Ct. App. Jan. 21, 2020) (acknowledging the relevance of *Central Housing* but disallowing common law protection without explanation).

145 *See* MINN. STAT. § 504B.285 (2019). Tenant A may also be able to use the penalty for complaint statute.

146 *See* MINN. STAT. § 504B.441 (2019).

147 *See* Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398, 402 (Minn. 2019); Cloverdale Foods of Minn. v. Pioneer Snacks, 580 N.W.2d 46 (Minn. Ct. App. 1998).

utilize the "general eviction" statute, but would likely need to rely on a Minnesota court's application of the common law.[148]

If the mechanics of the retaliatory eviction protections were fully equivalent, the variance in the above-mentioned routes would be a mere oddity without real potential for undermining legal uniformity. However, because each tenant would have to assert a different burden in their defense, one of these three unrepresented tenants is much more likely to face an eviction. Under the "general eviction" statute, Tenant A may assert that their eviction is retaliatory for any of a broad range of reasons.[149] Tenant B may only prevail in their retaliation defense if the eviction, or decrease in service or increase of obligations, was in response to a complaint of a violation (and not because of their breaches).[150] Tenant C would be required to show that their complaint to the landlord had alleged "material violations . . . of state or local law, residential covenants, or the lease."[151]

In the hypothetical above, tenants may be responsible for different legal burdens despite the similarity of their situations. Tenant C would have to prove their case by a preponderance of evidence, without the assistance of a presumption.[152] Tenants A and B would have the benefit of a ninety-day presumption that an eviction was retaliatory.[153] This presumption would allow the tenants, who may be unrepresented, to allege that they made a protected "complaint," and force their landlord to rebut the presumption.[154] When faced with a presumption of

148 *See* § 504B.285. If this tenant had a lease instead and had breached, then this would be the exact situation as *Central Housing*.

149 *See id.*

150 *See* § 504B.441.

151 *Cent. Hous. Assocs.*, 929 N.W.2d at 409.

152 *See id.*

153 *Compare Cent. Hous. Assocs.*, 929 N.W.2d at 409 ("The tenant has the burden to assert the defense and to prove it by a preponderance of the evidence."), *with* MINN. STAT. § 504B.441 ("The burden of proving otherwise is on the landlord if the eviction or increase of obligations or decrease of services occurs within 90 days after filing the complaint"), *and* MINN. STAT. § 504B.285 ("If the notice to quit was served within 90 days of the date of [a protected] act of the tenant . . . the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the [landlord].").

154 Lindsey, *supra* note 51, at 114–16 (discussing rebuttable presumptions); Player, *supra* note 55, at 620–29; *see also* Casserly, *supra* note 10, at 1342–43 (on presumptions). *See generally* Engler, *supra* note 4.

retaliatory motive, landlords may be more willing to settle cases out of court,[155] or avoid evicting tenants altogether.[156]

However, when the issue of tenant breach affects whether a tenant can use a presumption to defend against retaliatory acts, a landlord is incentivized to attempt to sidestep the presumption altogether. Tenant breaches may be inconsistently monitored by landlords, and treating breaching tenants different than non-breaching tenants can incentivize this inconsistency.[157] In other words, because the general eviction statute is the most protective of tenant activity, an alleged breach will immediately force the tenant to choose between a confusing common law defense and the penalty for complaint statute: a weaker statutory provision (read narrowly by the *Central Housing* court).

Like Olson, many tenants have to prevail on the issue of their own breach in order to assert their own defense of retaliation.[158] In Minnesota, landlords can benefit from sidestepping tenant protections by tallying breaches in preparation for an eviction action (or other retaliatory conduct), forcing a tenant into a weaker retaliation defense.[159] For example, where a tenant's lease is nearly complete and a landlord seeks to retaliatorily not renew it, a landlord is incentivized to file a breach of lease action instead of simply not renewing. While the legislature may have intended for separate defenses when a tenant has a lease versus when they do not,[160] it seems counterintuitive that a landlord may be able to avoid having to rebut a presumption of retaliation by filing for a breach-of-lease eviction. Further, it is not clear what and how much evidence would be required to show that an eviction was in retaliation for a complaint absent any presumption.

Besides the issues of inequitable or nonsensical results, the non-uniformity and complexity of retaliatory eviction defenses increases the

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155 *But see* Erica L. Fox, Note, *Alone in the Hallway: Challenges to Effective Self-Representation in Negotiation*, 1 HARV. NEGOT. L. REV. 85 (1996) (describing how informal landlord-tenant negotiation may disadvantage tenants).

156 *See* Lindsey, *supra* note 51, at 119–20 (proposing increasing access to preliminary injunctions for tenants).

157 *See* Engler, *supra* note 4, at 48 ("The unrepresented tenant faces swift eviction . . . ."); Lindsey, *supra* note 51, at 117–19 (discussing over-complexity in housing-court procedures and the lack of tenant representation).

158 Or, in Minnesota, to receive the protection of a statute. *See* DESMOND, *supra* note 6, at 304 (noting that tenants can be too overwhelmed by the distracting court environment or their personal situation to raise any arguments in court); Lindsey, *supra* note 51, at 105–110.

159 *See supra* Section II.B. Most landlords would prefer to litigate retaliation issues under the common law defense, where the tenant has a higher legal burden. If landlords can plausibly allege a tenant breach, their tenant can only utilize the common law or penalty for complaint defenses.

160 When a tenant does not breach, or otherwise does not have a lease, they have access to the "general eviction" statute found in MINN. STAT. § 504B.285 (2019). When a tenant breaches, they *only* have access to the penalty for complaint statute found in MINN. STAT. § 504B.441 (2019).

likelihood that unrepresented tenants will not know when their landlord has acted in an unprotected, retaliatory manner.[161] This issue is made worse by the lack of representation in most landlord-tenant cases.[162] As a result, it may be impossible for a tenant to make an efficient or informed decision about their odds in fighting an eviction. The cost and strain on limited housing court lawyers may become an inefficient use of resources over often small monetary sums or non-monetary vindications of tenant rights.[163] This may discourage tenants from using retaliatory eviction protections or showing up to court altogether.[164]

B. *Comparing Solutions*

In response to the concerns noted above, both the Minnesota courts and the Minnesota legislature should consider steps to clarify the bounds of the statute. This Note does not explicitly draft or endorse a comprehensive statute for the Minnesota legislature,[165] rather, it suggests there already exist well-considered doctrines of retaliatory eviction law that can help produce more logical protections than current Minnesota law. This Section elaborates on four such considerations that Minnesota lawmakers (and judges) should weigh as they address the issues raised by *Central Housing*: (i) ways in which Minnesota Courts can fix ambiguities; (ii) the benefits of a clearer elaboration of the type of tenant activities protected from retaliation; (iii) an argument for a universal burden of proof amongst all classes of

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161 Engler, *supra* note 4, at 48–49 ("Some reports discuss winning generally, showing tenants three, six, ten, or even nineteen times as likely to win if they are represented by counsel, in comparison to unrepresented tenants. . . . faring better '[a]t every stage of the proceeding' . . . in avoiding having judgments entered against them.").

162 *Id.* at 74–75 (discussing the need for representation due to the complexity of housing court law and procedures).

163 For ideas on the ways in which the cost of determining property rights should be weighed into the remedy of the prevailing party, see Stewart E. Sterk, *Property Rules, Liability Rules, and Uncertainty About Property Rights*, 106 MICH. L. REV. 1285, 1304 (2008) (While the "[s]earch to determine the scope of one's legal rights has the potential to produce both social gains and private gains. . . . [s]earch is efficient only when the expected social gains from the search exceed the cost of the search.").

164 The vast majority of tenants default in eviction cases. *See* DESMOND, *supra* note 6, at 358 n.4 (describing a survey of evictions in Milwaukee, Wis.); *see also* Summers, *supra* note 90, at 178 (reporting on a survey of evictions in New York).

165 Minnesota should produce a modern and streamlined consolidated retaliatory eviction defense. The closest this Note will come to a recommendation is that the author believes that the Minnesota Supreme Court should adopt the interpretive guidelines laid out in *Parkin v. Fitzgerald*, 240 N.W.2d 828 (Minn. 1976). *See supra* notes 61–63 and accompanying text.

tenants who allege retaliation; and (iv) reasons Minnesota should consider the legal guidelines encoded in the Uniform Residential Landlord Tenant Act (URLTA).[166] This Note further suggests the benefit of a new statute can be observed in the solutions of other jurisdictions. Any reforms should be undertaken with corresponding investments in public education regarding prohibited landlord conduct to provide both clarity and predictability for tenants, and efficient conduct regulation of landlords.[167]

1. Rewriting *Central Housing*

While the legislative role provides the most direct solution to the problems of *Central Housing*, there are interpretations that rewrite *Central Housing*'s common law ruling to effectuate a clearer outcome and guide for future cases. This analysis relies on both the existing precedents of Minnesota cases, and the cases of other states. Courts in other states, such as Illinois, have interpreted retaliation statutes liberally, with a preference for tenant relief.[168] The Court in *Central Housing* could have found a similar public policy justification in the history and purpose of retaliatory eviction protections. This may have adjusted *Central Housing*'s statutory ruling, justifying protection through the intent of the statute without resorting to a common law solution.[169] This would have produced an approach to deter landlord retaliation with fewer gaps in tenant protection, and would have simultaneously reduced the confusion of multiple retaliation routes.[170] This approach also would be consistent with the history and precedent of Minnesota landlord-tenant law.[171]

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166 UNIF. RESIDENTIAL LANDLORD & TENANT ACT § 5.101 (UNIF. L. COMM'N 1972) [hereinafter URLTA]; REVISED UNIF. RESIDENTIAL LANDLORD & TENANT ACT ART. 9 (UNIF. L. COMM'N 2015) [hereinafter REV. URLTA]. *See* Lonegrass, *supra* note 42, at 1095–1103; Cunningham, *supra* note 45, at 127–35.

167 *See* Gifford, *supra* note 6, at 467 (discussing the interrelation between the content of legal standards, public education of those standards, and enforcement).

168 *See infra* note 178; Morford v. Lensey Corp., 442 N.E.2d 933, 938 (Ill. App. Ct. 1982) ("[The retaliatory eviction statute] evidences a broad statement of public policy against such retaliatory evictions, and, as remedial legislation, it must be liberally construed to effect its purposes.").

169 *See, e.g.*, Parkin v. Fitzgerald, 240 N.W.2d 828, 832 (Minn. 1976) (requiring a "nonretaliatory reason for the eviction," and defining "[a] nonretaliatory reason [as] a reason wholly unrelated to and unmotivated by any good-faith activity on the part of the tenant protected by the statute").

170 *Id.* at 833 ("Such a standard will give full protection to tenants and will enhance the legislative policy of liberal construction of statutory covenants to insure adequate housing.").

171 See *supra* notes 59–69 and accompanying text.

In opting to call the protection granted a gap-filling remedy, the court forecasted the defense's limited applicability. This limitation was not necessitated by the circumstance; rather, the court was empowered to develop the common law in such a way that it could encompass or overlap with the statutory scheme.[172] Creating separate standards for both a common law defense and two statutory defenses raises the likelihood of confusion, misapplication, or inequitable application.[173] In this regard, the existence of additional defenses should not be understood as Minnesota having *more* tenant protection from retaliation than other states.[174] Many states protect tenants more clearly and in more settings than the combined remedies of Minnesota law.[175] If the supreme court sought to use *Central Housing* to provide a comprehensive solution to the complicated law of landlord retaliation, the court should have either read the statutory protections differently,[176] or created a broad common law remedy.

2. Type of Tenants and Tenant Activity Protected

In mounting any legal defense, there is benefit to identifying the individuals who are intended to be protected by it.[177] Landlord-tenant law is no different. While recent counts reflect that most states have statutes prohibiting retaliation based on tenant action, many do not protect a tenant when they have only complained to a landlord and not to a governmental authority.[178] Some states have statutory language

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172 *See* Cent. Hous. Assocs., LP. v. Olson, 929 N.W.2d 398, 409 (Minn. 2019) (citing MINN. STAT. § 504B.471 as evidence that the tenant remedies sections of Minnesota law do not limit the common law powers of the court to develop new landlord-tenant remedies). It follows that the court could have produced an "umbrella" common law defense.

173 *See* Super, *supra* note 47, at 405 (discussing even-handed application of the law as one of the requisite factors for the tenant revolution's success).

174 *See* Casserly, *supra* note 10, at 1326–30 (comparing the scope of multiple states retaliatory eviction protections).

175 *Id.*

176 If the court had read the statutes broadly to cover this instance, it would have required overruling precedent. As the dissent points out, so too did creating a common law solution. *Cent. Hous. Assocs., LP.*, 929 N.W.2d. at 413 (Gildea, C.J., dissenting). The court also could have provided a comprehensive solution with a much narrower reading of the statute. This might have been unpalatable for the court on the facts of *Central Housing*, but a narrow reading would have been more clear, and may even have prompted legislative action (best suited to provide clarity).

177 *See generally* Gifford, *supra* note 6.

178 *See* Casserly, *supra* note 10, at 1319–20; Lonegrass, *supra* note 42, at 1092. *See, e.g.*, MICH. COMP. LAWS. § 600.5720 (2019); 765 ILL. COMP. STAT. 720/1 (2019) (Illinois's retaliation statute does not protect a tenant for a complaint to the landlord. "It is declared to be against the public policy of the State for a landlord to terminate or refuse to renew a lease or tenancy of property used as a residence on the ground that the tenant has complained to *any governmental authority*

which explicitly finds that a complaint directly to a landlord triggers a retaliatory eviction defense.[179] Some state statutes go further and protect tenants from retaliation based on activities outside of the landlord/tenant relationship; such as joining a tenant union or other political activity.[180] A few states do allow for a common law retaliation defense, including some that are predicated on language even less clear than *Central Housing* itself.[181]

This plethora of other legal routes may be part of the reason why a relatively ambiguous statute with common law discretion may have been an attractive compromise for Minnesota lawmakers when they drafted the first retaliation defense in the 1970s.[182] Regardless of the reason, as long as the ambiguous statutes remain, the best opportunity for clarification is when the statutes are examined by the Minnesota Supreme Court. After *Central Housing*, there seems to be no clearly defined set of protected tenants under the common law except for the specific tenant (Olson) in *Central Housing*.[183] Other model statutes, such as the *Restatement of Property*, which may not generally provide as many robust protections as Minnesota has in its comprehensive tenants' rights statutes, give more clear and concrete answers about protected tenant conduct.[184] Because knowledge about whether their conduct is protected is necessary for tenants to use retaliation

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of a bona fide violation of any applicable building code, health ordinance, or similar regulation. Any provision in any lease, or any agreement or understanding, purporting to permit the landlord to terminate or refuse to renew a lease or tenancy for such reason is void." (emphasis added)).

179 *See, e.g.*, HAW. REV. STAT. § 521-74 (1993) ("The tenant has complained in good faith to the department of health, landlord, building department . . . ."); ALA. CODE § 35-9A-501 (2019) ("[T]he tenant has complained to the landlord of a violation . . . ."); ALASKA STAT. § 34.03.310 (2019) ("[A] landlord may not retaliate . . . after the tenant has . . . complained to the landlord of a violation . . . ."); ARIZ. REV. STAT. ANN. § 33-1381 (2019) (explicitly protecting tenant complaints to landlords); CAL. CIV CODE § 1942.5 (Deering 2019) (protecting "oral complaint[s] to the lessor regarding tenantability"); CONN. GEN. STAT. § 47a-20 (2019) ("A landlord shall not maintain an action or proceeding against a tenant to recover possession of a dwelling unit . . . within six months after . . . the tenant has in good faith requested the landlord to make repairs").

180 ARIZ. REV. STAT. ANN. § 33-1381 (2019); MICH. COMP. LAWS. § 600.5720 (2019).

181 As an example of a fairly "open-ended" retaliation protection, see the West Virginia common law retaliation protection provided in Imperial Colliery Co. v. Fout, 373 S.E.2d 489, 494 (W. Va. 1988) ("We accordingly hold that retaliation may be asserted as a defense to a summary eviction proceeding under W. Va. Code, 55-3A-1, et seq., if the landlord's conduct is in retaliation for the tenant's exercise of a right incidental to the tenancy.").

182 MINN. STAT. § 504B.471 (2019).

183 *See supra* Section II.B.

184 *See, e.g.*, RESTATEMENT (SECOND) OF PROP.: LANDLORD & TENANT § 14.8 (AM. L. INST. 1977) (describing late rent payments as an example of non-material breach that would not insulate a landlord from a retaliation claim).

protections,[185] it is vital that Minnesota clarify the law to make it accessible to the often unrepresented tenant or, alternatively, provide legal aid to more tenants facing eviction.[186] This clarity could be achieved by a simple statutory provision listing protected tenant behavior.

3. Burden of Proof

The Minnesota legislature should further simplify retaliation protections by treating all tenants the same way if they can show that there has been a good faith complaint; it can do this by unifying a burden of proof and presumption mechanism for proving retaliatory eviction.[187] This lower and uniform bar would create a more equitable balance for often-unrepresented tenants and their often-represented landlords. Changing the burden could remove questionable incentive structures and better incentivize more constructive tenant-landlord relationships.[188]

In treating tenants who complain directly to their landlords differently from tenants who complain to housing authorities, the court is also disincentivizing the type of landlord-tenant contact that could avoid the largely one-sided setting of housing court.[189] After *Central Housing*, a well-informed tenant still should not go directly to their landlord with a complaint, as opposed to a court or agency, because they may be forfeiting a presumption of retaliation if the landlord retaliates. Tenants who now go to government organizations to receive protection from retaliation may create unnecessary resentment from landlords who may feel blindsided by complaints never raised in person.[190] This result is contrary to the stated aims of *Central Housing*, but is to be expected by the particulars of the varied burden of proof.[191]

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185 Or at least knowledge that there is a possibility that a tenant is protected by the common law.

186 Put another way, if tenants do not know what protections they are entitled to, they will not avail themselves of those protections. *See* DESMOND, *supra* note 6, at 303–05; Lindsey, *supra* note 51, at 133–40 (discussing the need for education for tenants without representation).

187 *See* Bell, *supra* note 50, at 505–08.

188 See *supra* Section III.A for a discussion of problematic incentives in the current scheme.

189 *See generally* Engler, *supra* note 4; Lindsey, *supra* note 51.

190 *See* Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d 398, 409 (Minn. 2019).

191 *Id.*

4. Uniform Residential Landlord Tenant Act

The Minnesota legislature could also look at both the content and structure of the URLTA in drafting a new retaliatory eviction statute.[192] While not universally acclaimed,[193] the advent of the URLTA was seen as a landmark step in the tenant's rights revolution of the 1960s and 1970s.[194] The 1972 Act, developed by academics who advocate for state law reform and uniformity, protects tenant complaints to governmental agencies, complaints made directly to landlords, and tenant organizing more broadly.[195] The URLTA's retaliation protections are also applicable to all tenants, whether or not they have a lease.[196]

The URLTA also uses much clearer statutory language than current Minnesota retaliatory eviction law,[197] and was developed with the understandings of the tenants' rights revolution of the mid-twentieth century. In other words, the provision was designed to actually provide practical and clear tenant protections, both substantively and procedurally. This remains true even if the URLTA requires some adjustment for Minnesota's use.[198] The URLTA goes a long way in clarifying the behaviors for which tenants are protected, while also providing a presumption that adverse landlord conduct after a complaint, within an entire year, is retaliatory.[199]

After the URLTA's drafting, many of the provisions were adopted in whole or in part by state legislatures.[200] Since that era, Minnesota's comparatively weak protections have invited comparison to the retaliatory protections provided in the URLTA.[201] In 2015, the URLTA was revised to update its provisions after nearly fifty years.[202] The fragmented and confusing state of Minnesota law after *Central Housing* provides a unique opportunity for the Minnesota legislature to adopt the revised provisions relating to retaliation. The revised URLTA keeps

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192 For a lengthy discussion of the original 1972 URLTA and its retaliatory eviction protections, *see* Cunningham, *supra* note 45, at 127–28. *See generally* Kurtz & Noble-Allgire, *supra* note 10.

193 *See, e.g.*, Blumberg & Robbins, *supra* note 76.

194 Cunningham, *supra* note 45, at 127 (discussing the retaliation protections of the URLTA).

195 *Id.*; URLTA, *supra* note 166, at § 5.101 (1972).

196 URLTA, *supra* note 166, at § 5.101 (1972).

197 *See* Note, *The Uniform Residential Landlord and Tenant Act: Facilitation of or Impediment to Reform Favorable to the Tenant?*, 15 WM. & MARY L. REV. 845, 904–07 (1974) (discussing the favorability of the URLTA to tenants).

198 Kurtz & Noble-Allgire, *supra* note 10, at 2 ("The laws are far from uniform . . . .").

199 URLTA, *supra* note 166, at § 5.101 (1972).

200 *See* Kurtz & Noble-Allgire, *supra* note 10.

201 Cunningham, *supra* note 45, at 131–34.

202 REV. URLTA, *supra* note 166, at §§ 901–04.

many of the provisions of the original URLTA and would comprehensibly address the problems with *Central Housing*.[203] The revised URLTA may also be more palatable for landlords, as it introduces punishments for tenants who make bad faith complaints and shortens the presumptive period in the original URLTA to six months.[204] Nonetheless, both versions of the URLTA, however, represent uniformity and universality unachieved by the fractured state of Minnesota law.

C. *The Possibility of Legislative Adjustment*

The majority, foreseeing the possibility that the legislature might take notice of the decision in *Central Housing* and find its new defense inadequate, was reassured in its predictions for easy legislative adjustment.[205] While the ease of such adjustment is arguable, the legislature can and should take multiple steps of reform, with or without adopting another state's statute or a model law.[206]

If the legislature were to attempt to narrow or clarify the common law remedy, it might require a rewrite or consolidation of the two statutes.[207] An alternative possibility is that the legislature could add a definition of "complaint" to the definitions listed in the tenant remedies section of the Minnesota Code.[208] The legislature could also limit or

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203 *Id.* at § 901 (listing numerous situations wherein a tenant would be entitled to the retaliation defense, including where a tenant "complained to the landlord of noncompliance with the lease."). The only substantial diminution of protections that currently exist in Minnesota would be the removal of protections for tenants in rent default. These protections could be preserved by excising § 903(c)(3) from the Rev. URLTA. *See* Kurtz & Noble-Allgire, *supra* note 10, at 7–8 (discussing "safe harbor" provisions for landlord retaliatory conduct).

204 REV. URLTA, *supra* note 166, at § 904 allows for a punitive three-month rent recovery for a bad faith complaint. That a landlord should be able to recover actual damages for bad faith tenant acts seems to be a fair relief to ward off bad faith complaints. This may allay one fear of landlords post-*Central Housing*: that there will be numerous unsubstantiated complaints. *See, e.g.*, Bernick Lifson, *Expanded Retaliation Defense: A New Hurdle to Evicting Tenants*, BERNICK LIFSON, P.A.: BLOG (July 9, 2019), https://www.bernicklifson.com/expanded-retaliation-defense-a-new-hurdle-to-evicting-tenants [https://perma.cc/P33Q-2F7K] ("[L]andlords must now be prepared to defend against any and all complaints made regarding real or perceived misconduct . . . .").

205 Cent. Hous. Assocs., LP v. Olson, 929 N.W.2d, 398, 410 (Minn. 2019) ("If our analysis is incorrect, of course, the Legislature is free to amend the statute to narrow the common-law defense that we recognize today.").

206 The Supreme Court could also revise or limit its ruling, as I suggested above, but the legislative remedy remains the most likely. *See supra* Section III.B.1.

207 MINN. STAT. § 504B.441 (2019); MINN. STAT. § 504B.285 (2019).

208 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 403 ("Because the word 'complaint' is not defined by the statute, we give it its plain and ordinary meaning."). MINN. STAT. § 504B.001 defines

eliminate the use of this common law defense if it disapproves of *Central Housing* altogether.[209] Because of the rarity of Minnesota Supreme Court landlord-tenant cases, it is unlikely that the Supreme Court will address the issues remaining any time soon. Therefore, the legislature is best positioned to revisit the state's confusing schema for tenant retaliation protections. Even without larger rewrites of the code sections handling retaliatory eviction,[210] the legislature could revisit the principles of *Central Housing* by limiting the Minnesota Supreme Court's powerful use of the common law in landlord-tenant circumstances.[211] While this solution might slow the development of law in this field, it might also grant more clarity.

While legislative adjustment to retaliation protection for tenants is possible, especially as part of large scale changes to housing law,[212] the changes to retaliatory eviction protections must be tailored for the purposes elaborated in *Edwards*. Without connection to the history of housing codes and their enforcement problems, Minnesota risks having a buffet of protections for tenants without any real clarity for them, and without conduct regulation on landlords.[213] Statutes from numerous states reflect this fundamental enforcement concern, and Minnesota should consider following suit.[214]

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fifteen terms that are present within the section, including "violation." If a definition of "complaint" were added to § 504B.001, it could be a simple way to extend or narrow the coverage of § 504B.441. For an example of a retaliatory eviction statute with clear definitions of "complaint" and a more clear scope, *see* N.C. GEN. STAT. § 42-37.1 (2019) (clearly distinguishing between a "good faith *complaint* or request . . . to the landlord, [or] his employee," a "good faith *complaint* to a government agency about a landlord's alleged violation," and a "government authority's issuance of a formal *complaint*" (emphasis added)).

209 If the legislature decided to narrow the definition of "complaint" in § 504B.441, it would require a clear statutory repeal of *Central Housing*'s holding. *See* Agassiz & Odessa Mut. Fire Ins. Co. v. Magnusson, 136 N.W.2d 861, 868 (1965) ("[S]tatutes are presumed not to alter or modify the common law unless they expressly so provide . . . .").

210 The issues of complexity, accessibility, and clarity, which could be addressed in a streamlined retaliatory eviction defense, may help chip away at extreme lack of tenant representation. *See* Gifford, *supra* note 6, at 430 ("The more easily, quickly, and cheaply a person may obtain a definitive ruling upon the consequences of [the person's] contemplated action, then, all other things being equal, the more likely is it that [the person] will seek such a ruling before [they] act[]."). *See generally* Desmond & Bell, *supra* note 47; Engler, *supra* note 4.

211 *Cent. Hous. Assocs., LP*, 929 N.W.2d at 409 (citing MINN. STAT. § 504B.471 (2019) for the notion that the tenant-remedies codes are "additional remedies" to common law development).

212 *See supra* notes 70–80 and accompanying text.

213 *See* Gifford, *supra* note 6, at 467.

214 *Compare* Edwards v. Habib, 397 F.2d 687 (D.C. Cir. 1968), *with* Vinson v. Hamilton, 854 P.2d 733, 736 (Alaska 1993) ("Otherwise, these tenants would not assert their rights under their leases and under the law, rightfully fearful that landlords would evict them in consequence. Such a result would frustrate public policy.").

CONCLUSION

Minnesota must evaluate its landlord-tenant laws to provide more stable and logical protections to tenants facing retaliatory eviction. These protections are necessary for the continued viability of housing codes, prohibitions against unlivable premises, and housing discrimination regulations. Keeping multiple approaches to determining the nature of a retaliatory action serves no purpose, and the lack of clarity in defining the extent of the new protections has the potential to reduce the State's capacity for regulating the conduct of landlords.[215] The complex solution presented in *Central Housing* will make the law more complicated and less accessible to the tenants in the best position to benefit from the legal protection. Landlords also deserve a clean and logical statement of their rights regarding eviction proceedings. Legal uncertainty about the rights of tenants also wastes landlord time and money without any clear gain.

With or without radical, overarching solutions to housing issues in the state and country, the Minnesota legislature must recognize that retaliation protections are a vital piece of functioning housing codes.[216] As such, prohibitions on retaliatory conduct need to effectuate legitimate protections, and should not be so complex that tenants and landlords cannot understand whether and when their acts are protected. The majority's opinion in *Central Housing* may prove inadequate on both fronts. These issues should prod the legislature to take action and smooth over the differences between the routes of retaliatory eviction protection in Minnesota. The legislature would be wise to take notice of the URLTA (both versions) and the approaches of other states to fashion a single statute which encompasses retaliatory eviction, with the original enforcement purpose of *Edwards* in mind. By providing a holistic solution to stem retaliatory evictions, the legislature will additionally be assisting the enforcement of housing codes and anti-discrimination laws that already exist to protect tenants.[217] This step is necessary for the success of any further solutions regarding the severe housing affordability and equity crises facing Minnesota and the country.

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215 *See generally* Gifford, *supra* note 6; D'Amato, *supra* note 6.

216 *Edwards*, 397 F.2d at 700–01.

217 *Id.*