

EVICTON DEFENSE PROTOCOL

Draft 7/23/2018

SERVICE DEFENSES

1. Personal Service

- a. Was the summons and complaint served?
- b. By someone other than Plaintiff?
- c. At least 7 days before the hearing?
- d. On someone of suitable age and discretion?
- e. Was the affidavit of service filed?

* If any answer is No – [Click Here](#)

2. Substituted Service

- a. Mailed and posted?
- b. By someone other than Plaintiff?
- c. At least 7 days before the hearing?
- d. Was the affidavit of service filed?

* If any answer is NO – [Click Here](#)

* **Insert Script 2a**

DISCLOSURE DEFENSES

1. Did the owner disclose his/her address prior to filing?
2. Is the owner's address a physical place where service can be accepted (not a P.O. Box)?

* If any answer is NO – [Click Here](#)

GROUND FOR EVICTION - Combined allegations? No posting required.

Holding Over Defenses:

1. Proper Notice

- a. Is the notice written?
- b. Is the notice dated?
- c. Was the notice mailed? Was the notice delivered?
- d. Does the notice period comply with the lease? Or, if rent is due monthly and there is no lease is the notice one month plus one day?
- e. Is there rent due?
- f. Did the owner attach a copy of the notice to the complaint?

- * If any answer is NO – [Click Here](#)

2. Tenant in a Foreclosed Property *(See page 5 for more information)*

- Is the property in foreclosure?
- Does the tenant have a lease?
- Did the tenancy commence before the foreclosure?
- Did the tenant receive a 90 day notice?

- * On a month-to-month lease, entitled to 90 days notice – [Click Here](#)

- * Year lease, longer than 90 days after redemption ends – [Click Here](#)

3. Domestic Violence

- Is the notice because of an incident where the tenant is a victim of domestic violence?

- * If yes – [Click Here](#)

4. Retaliation

- Did the tenant attempt to enforce her rights under the law or the lease?
- Did the tenant do this within 90 days of the notice?
- Did the owner have a legitimate non-retaliatory reason for the notice?

- * Retaliation defense – [Click Here](#)

5. Waiver

- Did the owner accept rent after the expiration of the notice to move?
- Is the owner both demanding rent and attempting to evict the tenant?

- * If yes – [Click Here](#)

6. Discrimination

- Is the termination because of the tenant's race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, and familial status?

- * If yes – [Click Here](#)

Non-Payment of Rent

1. Habitability

- Are there repair problems?
- Did the tenant give notice to the owner of the problems?
- Has the owner failed to fix the problems? **OR**
- Is the property condemned? Lacking a Certificate of Occupancy? **OR**
- Are owner-provided utilities disconnected?

- * If repair problems were not caused by tenant and answers to the above are YES — [Click Here](#)

2. Late Fees

- Is there a provision for late fees in the lease?
- Is the late fee equal to or less than 8% of the overdue rent payment?
- Once the amount is adjusted, tenant can redeem at the lower amount, if they agree with the rest of the balance
- OR** they can request a trial if they dispute the other amounts as well

- * Dispute late fees – [Click Here](#)

3. Acceptance of Rent or Partial Payment

- Did the owner accept the rent?
- Did the tenant make a partial payment of rent?
- Is there a provision in the lease that allows the owner to evict even if a partial payment is received?

- * Partial payment – [Click Here](#)

4. Receipts

- Did the tenant pay rent in cash?
 - If so, landlord must give tenant receipt. [Minn. Stat. 504B.118](#)
- Did the tenant pay rent by money order?
- Does the money order reflect the rent was paid?
- Presumption that rent was paid, if tenant has money orders (or receipts for money orders) that line up with outstanding amount and dates
- See [Minn. Stat. 504B.291 \(Subd 1\)](#) for full details

- * Receipts presumption – [Click Here](#)

Breach of Lease

1. Does the tenant have a written lease?

- If not, landlord cannot evict for breach of the lease
- Landlord can evict for other reasons, but not for breach
- No written lease – [Click Here](#)

2. Did the owner attach a copy of the lease to the complaint?

- Lease must be attached (or provided at the first appearance)
- Otherwise, violation of Housing Court Rules ([Rule 604](#))

- * Lease not attached – [Click Here](#)

3. **Is the breach material?** [Minn. Stat. §504B.285 \(Subd. 4\)](#)
 - * Breach NOT material – [Click Here](#)

4. **Domestic Violence**

Is the breach because of an incident where the tenant is a victim of domestic violence?

 - * If Yes – [Click Here](#)

- Tenant tried to break their lease because of a domestic violence incident, and their landlord didn't honor their request. See [Minn. Stat. §504B.206](#) for specifics.

 - * Domestic violence break lease — [Click Here](#)

5. **Did the owner give the tenant a copy of the lease before filing the eviction?** See [Minn. Stat. §504B.115](#)
 - * If No — [Click Here](#)

6. **Did the owner accept rent after knowledge of the breach, thus waiving his right to evict the tenant?**
 - * If Yes — [Click Here](#)

7. **Is the allegation of breach actually illegal discrimination?** Disability? Accommodation?
 - * If Yes [Click Here](#)

8. **Is the lease term illegal?**

Examples: making tenant pay for repairs, limiting tenant's ability to call the police, making tenant pay for bedbug treatment, etc.

 - * If yes — [Click Here](#)

9. **Police Calls**

Is the breach a penalty for calling the police or emergency assistance?
See [Minn. Stat. §504B.205](#)

 - * If yes — [Click Here](#)

TYPES OF TENANCY

1. Subsidized Housing

(Clue: Do the tenants pay 30% of their income for rent?)

- a. Are they living in public housing?
- b. Are they living in project-based subsidized housing?
- c. Do they have a Section 8 voucher?
- d. Do they live in group residential housing (GRH)?
- e. Do they live in a Section 42 Low Income Housing Tax Credit property?
 - 1) Will be “affordable”, not 30% of their income

* If any answer is YES – [Click Here](#)

2. Is the tenant an active service member?

* If YES – [Click Here](#)

3. Homeowner/Tenant Eviction

a. Mortgage foreclosure

- 1) Was owner given notice of the sheriff’s sale?
 - a) If they are living in the home that is being foreclosed, a copy of the notice of sheriff sale must be served on owner/household member at least 4 weeks before the sale date
- 2) Did owner request a postponement of the sale?
- 3) Was owner given the 6 months or the 5 weeks (if property is vacant OR after a postponement) to redeem after the sheriff’s sale, before an eviction was filed?

* Redemption period hasn’t run yet – [Click Here](#)

b. Contract for Deed Cancellation

- 1) Owner/individual paying on contract for deed
 - a) Does the notice follow the regulation found in [Minn. Stat. §559.21](#)?
 - i. If the contract was executed after 7/31/1985, it can be cancelled after 60 days’ notice
 - ii. Notice must say when the contract will expire and how they are in default on the contract
 - b) Check the specific requirements found in [Minn. Stat. §559.21](#)?

* Cancellation did not comply with law – [Click Here](#)

* Time hasn’t run on the cancellation yet – [Click Here](#)

4. **Tenant in Foreclosed Property** (See [Minn. Stat. §504B.285](#))

- a. Was the property in foreclosure when the tenant moved in?
 - 1) If the sheriff's sale was already scheduled, tenant must be given written notice of this.
 - a) Tenant must be told when redemption period ends; \$500 civil penalty if not disclosed.
 - b) Tenant's lease can only run for two months or until the end of the redemption period, whichever is shorter (except in limited circumstances)
 - c) See [Minn Stat. §504b.151](#)
- b. Was the tenant already a tenant *before* the sheriff's sale was scheduled?
 - 1) Yes, but on a month-to-month lease
 - a) The new owner (usually the bank) is now the landlord. Can start collecting rent after the redemption period runs. Until then, tenant should keep paying landlord.
 - b) Tenant can continue living there if/until new owner gives tenant 90 days' notice

* Not given 90 days' notice – [Click Here](#)

- 2) Yes, on a term lease (for a set time)
 - a) New owner (usually the bank) is now the landlord
 - b) Lease extended more than 90 days after the end of the redemption period
 - c) The lease continues as long as tenant was a bona fide tenant
 - d) A *bona fide tenant* means:
 - i. The person whose mortgage is being foreclosed on is not you, your child, your spouse, or your mother or father; AND
 - ii. The lease was an arm's-length transaction; AND
 - iii. The base rent is not substantially below market rate.

* Not being allowed to finish lease – [Click Here](#)

- e) Tenant entitled to 90 days' notice of non-renewal, when lease ends
- f) The exception (even with a bona fide tenant) is if the new owners plan to use the property as their primary residence
 - i. In this case, tenant must still be given 90 days' notice

5. **Tenant in Contract For Deed Cancellation Properties** (See [Minn. Stat. §504B.285 Subd. 1b](#))

- a. Rent for tenants
 - 1) Must keep paying rent to landlord before cancellation

- 2) After cancellation, if seller asks tenant to pay rent, they must pay
 - 3) If seller does not ask for rent, tenant is under no obligation to pay rent.
- b. New tenants
- 1) If the landlord got notice of the cancellation, they must give written notice to new tenants (who are starting their lease during this period)
 - 2) Landlord must tell new tenants in writing when contract cancellation period ends. Failure to do so entitles tenant to ask for \$500 civil penalty
- c. Existing tenants are not entitled to notice of the cancellation.
- d. All tenants
- 1) The seller (person selling building to landlord) has to give tenant at least 2 months' notice to vacate after cancellation
 - 2) Notice can be no sooner than one month after the expiration of the time for termination
- * Not given 2 months notice – [Click Here](#)

6. **Manufactured Homes**

- a. General rules
- 1) Lease must be in writing and signed. (See [Minn. Stat. §327C.02](#))
- * No written lease – [Click Here](#)
- 2) Park must give residents 60 days written notice of any rent increase; rent cannot be increased more than twice in 12 months.
- * Improper rent increase – [Click Here](#)
- b. Fees
- 1) For specifics see [Minn. Stat. §327C.03](#)
 - 2) Park cannot charge any fees based on the number or age of the people who live in home
 - 3) Park can require security deposit, but cannot exceed two months' rent
 - 4) Maintenance fees
 - a) Park can charge for lot maintenance only if: work is required by lease, park rules, or state/local law AND resident failed to do it
 - b) Park may do maintenance and charge reasonable costs plus a fee not to exceed \$10 if:

- i. Park gave written notice explaining what needed to be done, why, and a deadline. Must explain that resident will be charged; AND
 - ii. Resident fails to comply before deadline; AND
 - iii. After the work is done, the park owner serves the resident with written notice of the charge
- c) Immediate compliance: if failure to do maintenance endangers park facilities or other residents, resident can be given notice to immediately correct problem
- * Improper fees - [Click Here](#)

5) Utility fees

- a) Park can charge for electric, fuel oil, natural or propane gas, sewer, waste disposal, or water service
- b) Unless park has installed device to accurately meter each household's use of a utility, park must charge each household the same amount. (See [Minn. Stat. §327C.04](#))
- c) If park provides utility, they may charge no more than:
 - i. Rate the resident could pay directly for same utility, or
 - ii. Rate charged within same market area to single family dwellings
- d) If a park owner provides electricity to residents by reselling electricity purchased from a public/municipal utility, and calculating these costs as listed above would cause park owner to lose money, park owner may bill residents at a rate calculated to allow the park owner to avoid losing money on the sale of electricity.

* Improper utility fees/metering – [Click Here](#)

c. Evictions

1) Non-payment

- a) Resident is behind on rent (or utilities that are owed to park)
- b) Must be given 10 days' written notice before filing

* Not given notice – [Click Here](#)

- c) Park must give proper notice, 60 days, to raise the rent
- d) Cannot raise the rent more than two times in 12 months

2) For cause (See [Minn. Stat. §327C.09](#))

* Request a trial – [Click Here](#)

- a) Resident breaks a law or government rule relating to their manufactured home

1. Must be given written notice of their violation
2. Must be given time to correct problem, or correct within a reasonable amount of time
 - i. If the law or ordinances gives a time to cure, then that is the timeframe the resident has
 - ii. If no timeframe given, then just a “reasonable” amount of time

b) Resident breaks their lease or park rules

* Request a trial - [Click Here](#)

1. Always a defense to an eviction if the rule itself is unreasonable
 - i. Law specifically prohibits unreasonable rules
 - ii. Certain rules are presumptively unreasonable (See [Minn. Stat. §327C.05](#))
2. Must be provided with written notice of the problem, listing the date, time, and nature of the alleged violation
3. Resident must comply with the lease/rules within 30 days (does NOT include non-payment of rent)
4. Repeated violations:
 - i. Park must give written notice of the violations and warn that any future violations could result in an eviction
 - ii. If a resident commits another violation within 6 months of receiving the above-listed notice, park can file for an eviction

c) Resident endangers others, seriously damages park property, or substantially annoys other residents

1. Must be given written notice of the time, date, and nature of the alleged problem
2. Given 30 days to correct
3. If the resident again endangers/damages/annoys after receiving the 30 day notice, can immediately file
4. No need to have a criminal conviction

* Request a trial — [Click Here](#)

d) All or part of the park is going to close

1. Residents must be given 9 months’ notice the park is set to close

* Not given notice before closure – [Click Here](#)

2. If some part or the park will remain open, the resident has the right to move within that zone, as long as there is a lot available
 3. If the park is converting to a condominium, residents have additional rights under Minnesota Manufactured Home Relocation Trust Fund (See [Minn. Stat. §462A.35](#))
 4. Public hearing is required and resident may not be required to vacate until 60 days after the conclusion of the public hearing
- e) Resident gave false information on their lease application
1. Park can only file for an eviction if it's within 1 year from when the resident started to pay rent
 2. If it's after 1 year, the park can give the resident notice to move, but must actually file an eviction if the resident contests the validity
- * Contest LL's claim of false information - [Click Here](#)
- 3) Eviction rights (See [Minn. Stat. §327C.11](#))
- a) A resident has a right to redemption (pay the outstanding rent plus court costs) two times in a 12 month period
- * Asserting redemption right – [Click Here](#)
- b) Writ of restitution
- i. Court gives the resident up to 7 days to arrange to remove their home from the lot
- c) Conditional writ
- i. Resident is allowed to stay in the park for up to 7 days
 - ii. Resident's home can stay on the lot for up to 60 days to allow for in-park sale
 - iii. Rent is still owed during this time
- * Request for conditional writ – [Click Here](#)
- d) No retaliation allowed
- i. If a resident has asserted their rights, the park cannot retaliate against them
 - ii. Within 90 days after a resident has asserted their rights, there is a presumption that negative action taken against them is retaliatory
- * Retaliation - [Click Here](#)

d. In-Park Sales

- 1) Refers to when a resident sells their home to someone who is going to keep it in the same park
- 2) The park cannot:
 - a) Charge more than a \$25 application processing fee to prospective buyers
 - b) Require the resident to sell their home to park or use the park as a listing agent
- 3) The park is allowed to:
 - a) Let the home remain vacant for 90+ days (depending on the park rules)
 - b) Require rent to be paid, even while a sale is pending
 - c) Approve a buyer/prospective-resident

e. Repossession

- 1) Repossession can occur:
 - a) Applies when the individual owns their mobile home but rents the land it rests on
 - b) Owner of a loan (“the lender”) must notify the borrower and the residents when there is a default
- 2) Default notice
 - a) Occupant must be given written notice of the default
 - b) 30 days’ notice to cure the default
 - c) Can pay full payment of the sum in arrears, including reasonable costs (not to exceed \$100) incurred by the secured party to enforce the agreement
- 3) Reinstatement notice
 - a) If the default is not cured in 30 days, resident must be given a reinstatement notice
 - b) Must contain
 - i. Name of the parties to the loan;
 - ii. Date of the loan;
 - iii. Amount in arrears on the loan as of the date of the notice;
 - iv. Description of the manufactured home; AND
 - v. Amount of the allowable fees incurred by the secured party while trying to regain possession prior to a court order
 - c) A court process is required before the lender can repossess the home. (See [Minn. Stat. §327.665](#))

7. Sublease

- a. Check to see what the lease says
- b. Landlord under no obligation to allow tenant to sublease
- c. Cannot sublease for the same amount of time as original lease
- d. Original tenant still on the hook for rent and other tenant obligations

- e. Landlord not in privity of contract (no obligations) to sub-tenant
 - 1) Generally, termination of the main lease terminates the sub-lease.
 - 2) The writ cannot be enforced against a sub-tenant who was not a party to the eviction. *Kowalenko v. Haines*

8. Other

a. Employee housing

- 1) Law includes in definition regarding tenants, can be for money or “exchange of services as rent”. (See [Minn. Stat. §504B.001](#))
- * I am a tenant, not afforded appropriate rights – [Click Here](#)
- 2) Is there a separate lease (or is housing conditioned on employment?)
 - a) Does the lease otherwise comply with MN law?
- 3) Possible referral to MN Department of Labor and Industry
 - b) Complaints about labor standards can be filed online or by phone at (651) 284-5070
 - c) Needs to be within 60 days of the incident/action

b. Hotels

- 1) Whether landlord and tenant law regulates the hotel depends on whether the resident has housing elsewhere.
- 2) Rebuttable presumption that, if the unit occupied is the sole residence of the guest, the occupancy is not transient. (See [Minn. Stat. §327.70](#))
- * I am a tenant – [Click Here](#)

c. Nursing home

- 1) Residents of nursing homes are tenants and are entitled to all other protections under §504B. (See [Minn. Stat. §144A.13](#)).
- 2) They have additional protections, found in the [Health Care Bill of Rights](#).
- 3) If there is a dispute, tenants should request a trial and be referred to SMRLS.
- * I am a tenant, request continuance – [Click Here](#)