



Tip of the Month August 2019

What Every Volunteer Attorney Should Know about Eviction Expungement

Submitted by: Muria Kruger, Resource Attorney
Volunteer Lawyers Network

If you haven't read a paper, listened to the news, or left your house in a while, you might not be aware that, in general, there is simply not enough affordable housing to meet demand. This means that people living at or near the poverty line have fewer homes to choose from, and there is great competition for any affordable housing which becomes available. According to a recent HousingLink.org report, rental vacancies in [Minneapolis](#) and [St. Paul](#) for people earning 30% of the area median income (AMI) were 0% in 2019. The numbers increase slightly for people with higher income, but finding safe and healthy affordable housing remains extremely challenging and competitive for low-income Minnesotans.

In these tight, competitive rental markets, additional barriers such as criminal or eviction records and poor credit history make something that is already extremely difficult nearly impossible. Because my role at VLN is in the housing program, I'd like to focus on eviction expungement. There are several important points I think every volunteer lawyer should understand when it comes to evictions and eviction expungements.

1. An eviction is on someone's record the moment it is filed. If the case was ultimately dismissed because the parties settled out of court or it was improperly filed or served, the case will still be on that tenant's record. An "eviction record" is not a record of a sheriff forcibly removing a recalcitrant tenant from a property, it is a record of an eviction being filed in court, which any landlord can do upon paying the filing fee. In Minnesota, landlords are not required to provide tenants with any notice prior to filing an eviction or any opportunity to cure.
2. Eviction records never automatically disappear. Credit reporting agencies governed by the [Fair Credit Reporting Act](#) are prohibited from reporting evictions that are more than seven years old. As long as an eviction appears on the court's docket, however, anyone can go to court or sit at their computer and find a record of the filing. Of note, the [Minnesota District Courts Document Retention Schedule](#) permits courts to expunge eviction records that are: (1) more than one year old without a judgment attached, and (2) more than 10 years old if a judgment is attached. Minnesota District Courts, however, do not follow this policy recommendation.
3. Expungements must be affirmatively requested. A court will not *sua sponte* remove an eviction record, even if the landlord requests dismissal of the case or the court dismisses the case for lack of jurisdiction. The eviction will still be on a tenant's record even if that tenant takes the case to trial and is fully vindicated by a final court order.

4. Expungements can be requested at the initial appearance in an eviction action. Landlords and tenants are court-ordered to negotiate at the initial appearance, and part of that negotiation can be over expungement. These negotiations frequently result in a settlement agreement. The parties can agree that, once all the provisions of the settlement agreement are satisfied, either the landlord or the tenant can file an affidavit of compliance. Based on that affidavit of compliance, the court can grant the expungement administratively, i.e. without another formal hearing on the matter. Administrative expungement is generally faster and doesn't require a second trip into court by either party.
5. Landlords can agree not to oppose expungements. If a landlord will not agree to an administrative expungement at the completion of the settlement agreement, landlords sometimes will agree, at minimum, to not oppose the filing of a separate expungement motion. These agreements to "not oppose" still require the tenant to wait until the completion of the underlying eviction case and then file a separate motion with a separate hearing on a new court date. Courts are generally willing to grant eviction expungement requests if the landlord has agreed in writing to not oppose the motion.
6. The parties can also agree to a caption change for ongoing cases where the parties want the court to maintain jurisdiction over the case. This would allow the court to change the tenant's name in the caption and on the docket to John/Jane Doe. Then, if a potential future landlord does a name search for the potential tenant, the eviction would not appear. To find the case, the searcher would need to know the court file number.
7. Minnesota courts have both [statutory](#) and [inherent](#) authority to grant expungement motions. While each case is unique and must be reviewed individually, motions for eviction expungements are generally granted if the eviction was for non-payment of rent and the money is no longer owed. Cases where the settlement agreements have been fully satisfied and where the court has dismissed the case or where the landlord agrees not to object are also generally granted. Money owing to a landlord, at least in Hennepin County, is also not always a complete bar to an expungement, [but the court will look closely at the amount of time that has passed since the eviction, the circumstances surrounding the eviction and the tenant's situation now.](#) See *State v. CA*, 304 N.W.2d 353 (Minn. 1981) (Connelly, J. concurring specially).
8. **Free help is available.** Volunteer attorneys at VLN's Housing Court Project can review a tenant's eviction history and assist with drafting expungement motions.

Housing Court Project
Hennepin County Government Center, C Tower, 3rd Floor
300 South Sixth Street
Minneapolis, MN 55487
T, W, F from 8:30 a.m. – 4:00 p.m. (closed 12:00-12:30 p.m.)
M, Th from 12:30 p.m. – 4:00 p.m.