



## PRACTICE TIP (02.18.20)

### **\$200 STATUTORY COSTS AND EXPUNGEMENT FOLLOWING DISMISSAL OF AN EVICTION ACTION**

In *HNA Properties v. Moore*, 848 N.W.2d 238 (Minn. App. 2014), the Minnesota Court of Appeals held that a tenant in an eviction action that is dismissed based upon a procedural error (failure of the plaintiff to file a power of authority as required by Minn. R. Gen. Pract. 603) is entitled to recover the \$200 in costs allowed under Minn. Stat. § 549.02, subd. 2 (2018).<sup>1</sup> The statute states, in pertinent part, that in district court costs shall be allowed:

To defendant: Upon discontinuance or dismissal or when judgment is rendered in the defendant's favor on the merits, \$200.

Although not discussed by the Court, the decision also adds clarity to Minn. Stat. § 504B.345 (2018), the statute that allows for the recovery of costs in eviction actions:

(c) If the court or jury finds for the defendant:

(1) the court shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution in favor of the defendant; and

(2) the court may expunge the records relating to the action under the provisions of section 484.014 or under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant.<sup>2</sup>

Accordingly, under the *HNA Properties* case, a dismissal based upon a threshold procedural objection represents a “finding” by the court. A “finding” is not dependent upon a trial on the merits.

However, a dismissal also permits an immediate expungement of the case records by the court pursuant to the expungement statute<sup>3</sup> or the court’s inherent authority. An order that judgment be entered for the \$200 costs and an order immediately expunging the case are mutually exclusive, as a judgment cannot be entered, docketed, and collected in an expunged case because there is no court file to accommodate judgment filings.

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<sup>1</sup> The Court also held that because the trial court did not reach the merits of the case, the tenant was not the “prevailing party,” and therefore could not tax the \$5.50 allowed under the statute to the prevailing party.

<sup>2</sup> Minn. Stat. § 504B.345, subd. 1(c)(1), (2).

<sup>3</sup> Minn. Stat. § 484.014 (2018).



One approach for resolving this dilemma would be to forego a request for expungement until after the \$200 is collected from the plaintiff. Seemingly, this would be a choice for the client to make, accounting for the uncertainty of collecting the \$200 and the possible cost and inconvenience occasioned by the filing of a formal motion for an expungement.

A second approach would be to use the threat of imposing the costs if a threshold defense is successful as a bargaining chip in settlement negotiations. A \$200 reduction in future rent to be paid by the tenant pursuant to a settlement agreement might be an option both beneficial to the tenant and agreeable to the landlord.

A third approach would be to request of the court an order imposing \$200 in costs, crediting that amount against the next rent payment, dismissing the action, and expunging the case. The court order would be available to both parties and would constitute proof of the rent reduction even after the case is expunged.