

EVICTION EXPUNGEMENT BASICS

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Overview of Training

The Impact of Evictions

Legal Standards

- Mandatory
- Statutory/Discretionary
- Inherent

The Process

- Drafting
- Filing
- Hearing
- Post-Hearing

The Impact of an Eviction

- An eviction permanently attaches to a tenant's record as soon as filed, regardless of the outcome.
 - Reported by tenant screening agencies for 7 years, but
 - Court records available indefinitely
 - Minneapolis/St. Paul Ordinances
- Low vacancy rates in rental housing
- Disparate impact:
 - 2016 study showed that 50% of residents in two zip codes (55411 & 55412) experienced an eviction in the previous three years
 - 10 property owners made up over 25% of all eviction filings*

*Evictions in Minneapolis (2016), Minneapolis Innovation Team, available at: <http://innovateminneapolis.com/documents/Evictions%20in%20Minneapolis%20Report.pdf>



Three Legal Standards for Eviction Expungement

Mandatory Authority

The diagram consists of three horizontal bars, each with a colored rounded rectangle on the left and a white rectangle on the right. The top bar is yellow, the middle is green, and the bottom is grey. Each bar is connected to the left by a vertical line and to the right by a horizontal line, forming a continuous path.

Statutory/Discretionary Authority

Common Law/Inherent Authority

Mandatory Authority

- Minn. Stat. § 484.014, subd. 3

The court **shall** order expungement of an eviction case commenced solely on the grounds provided in section 504B.285, subdivision 1, clause (1), if the court finds that the defendant occupied real property that was subject to contract for deed cancellation or mortgage foreclosure and:

(1) the time for contract cancellation or foreclosure redemption has expired **and** the defendant vacated the property prior to commencement of the eviction action; **or**

(2) the defendant was a tenant during the contract cancellation or foreclosure redemption period and did not receive a notice under section 504B.285, subdivision 1a or 1b to vacate on a date prior to commencement of the eviction case.

Statutory/Discretionary Authority

Minn. Stat. § 484.014, subd. 2 “The court may order expungement of an eviction case court file . . . [If] the plaintiff’s case is sufficiently without basis in fact or law . . . that expungement is clearly in the interests of justice and those interests are not outweighed by the public’s interest in knowing about the record.”



Three-part test:

Is the case sufficiently without basis in fact or law?

Is the expungement within the interests of justice?

Are the interests of justice outweighed by the public’s interest in knowing about the record?

Statutory/ Discretionary Authority

- “Without Basis in Fact or Law”
 - Looking for jurisdictional, procedural or substantive defects.
 - Improper service
 - Inappropriate plaintiff
 - Serious habitability issues
 - Breach of lease
 - Other defenses to eviction

Proper Service

Minn. Stat. 504B.331
controls

Strict compliance
required

Must be completed 7
days prior to hearing

Personal:

- Must be served by an adult who is not named a party to the action..

Substitute:

- Must be served by “leaving a copy . . . with a person of suitable age and discretion residing there.”

Alternative:

- Two attempts at personal service must be made, one between the hours of 6-10pm,
- Copy of summons and complaint is mailed to the tenant’s last known address, AND
- Affidavit of Not Found and Affidavit of Mailing must be filed, THEN
- The summons and complaint can be posted and an Affidavit of Posting filed.

Proper Plaintiff: Common defects

- Plaintiff must be the person entitled to possession of the building or authorized management agent.
 - Minn. Stat. 504B.285, Subd. 1(a) and Minn. Stat. 481.02, Subd. 3(13).
- Power of Authority
- Must have a rental license
 - City of Minneapolis ordinance



Habitability

- MN Stat. 504B.161 provides four covenants of habitability:
 - Compliance with all safety and health codes
 - Reasonable Repair
 - Fit for intended purpose
 - Reasonably energy efficient
- Covenants of habitability CANNOT be waived or modified.
- Fritz Defense (*Fritz v. Warthen*, 213 N.W.2d 339 (1973)).
- Strength of this defense in expungement setting??



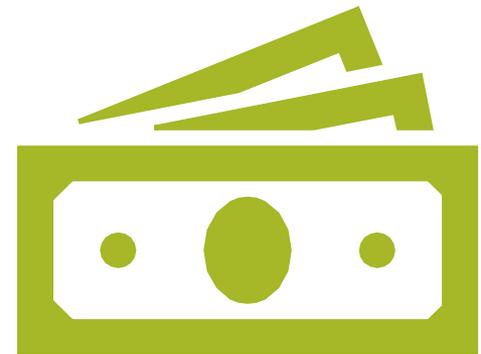
Breach of Lease

- Landlord claims tenant has violated key provision of the lease.
 - Breach must be “material”
 - Prohibited behavior and consequence must be included in lease (except for criminal behavior)
 - Lease must be attached to the eviction complaint
 - Burden on the landlord to prove breach
 - Waiver?



Other defenses

- Tenant no longer living in the property at the time of the eviction
- Rent already paid?
- Retaliatory eviction
- Others



Common law/Inherent Authority

State v. C.A. 304 N.W.2d 353 (Minn. 1981)

- The test is “whether expungement will yield a benefit to the moving party commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing, and monitoring an expungement order.”

Minn. Stat. 504B.345 subd.1(c)(2) - amended in 2014

- “[T]he court may expunge the [eviction] records ... under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant.”

**But see At Home Apts. v. D.B., 2019 WL 178509 (Minn. Ct. App. 2019)*

MN District Court Document Retention Policy

- Unlawful Detainers “may” be destroyed after one year if no money judgement is ordered.



District Court Record Retention Schedule

Revisions Effective June 1, 2018

	RECORD TITLE, CONTENT AND USAGE	RETENTION PERIOD	DESTRUCTION GUIDELINES	LEGAL AUTHORITY/REFERENCES/NOTES
(e)	Unlawful Detainer and Rent Escrow			
	<ul style="list-style-type: none"> • No money judgment ordered 	1 year FY + 3 years	Destroy 1 year after file is closed If financial activity is associated destroy FY + 3 yr after final disposition	
	<ul style="list-style-type: none"> • Money judgment ordered 	10 years	10 years if there are no outstanding debts	

Source: http://mncourts.gov/mncourtsgov/media/scao_library/MN-District-Court-Record-Retention-Schedule.pdf

Factors Considered Under Inherent Authority

- *At Home Apartments, LLC v. D.B.*, 2019 WL 178509 (Minn. Ct. App. Jan. 14, 2019) (Connolly, J., concurring).
 - “Whether any backed-rent is owed, how much is owed, and if there is a payment plan in place – though I do not believe that an expungement should be automatically denied solely because any rent owing has not been paid,”
 - Tenant’s eviction history,
 - Reason for non-payment,
 - Length of time since the last eviction,
 - Was there a material breach of lease,
 - Number of evictions with the same landlord; and
 - The term of the lease.
- *Minneapolis Public Housing Authority v. REDACTED*, No. 27-CV-HC-13-4766 (Minn. Dist. Ct. June 2, 2014).
 - How long the tenant resided at the premises,
 - The tenant’s history of timely rent payments,
 - The tenant’s reason for any failures to make timely rent payments,
 - Whether there have been other evictions filed against the tenant, or
 - Any injustices that may arise from the housing market’s treatment of the eviction record.

Additional Factors Affecting the Outcome

- Dismissal or judgment in client's favor
- Settlement Agreement satisfied?
- Rent still owed to the landlord?
- Was a writ ultimately issued or did the client leave willingly?
- Lack of opposition by landlord to the motion
- Did the client continue to rent from the landlord after the eviction?
- What has the tenant done in the time since the eviction and now?
- What are the tenant's circumstances today?

- VLN will send you the underlying documents for each eviction case
 - If no court documents, case maybe so old the documents are no longer available.
- Blank forms are available on our website: www.vlnmn.org/housing
- Draft Motion for Eviction Expungement
 - One motion for each eviction
- Draft an In Forma Pauperis Form (IFP)
 - One IFP for each eviction
 - One IFP for each tenant seeking eviction if separate households

The Process: Drafting

The Process: Filing

Documents for filing:

- Notice of Motion and Motion to Expunge Eviction Records
- Affidavit to Proceed In Forma Pauperis (IFP)
- Certificate of Representation
- Proposed Order (outside of Hennepin and Ramsey Counties)

E-file all documents as “confidential”

Court issues IFP Order and assigns administrative review or hearing date

Serve Eviction Expungement Motion and Notice of Administrative Review or Notice of Hearing as required by Notice.

- If unclear, call court and ask.
- File Affidavit of Service. Normally 3 days before hearing, but check.

The Process: If an Administrative Review

- Tenant receives a Notice of Administrative Review of Expungement Hearing, or similar notice, from the court.
 - Notice clearly states service requirements.
 - Notice clearly states that NO hearing will occur
- Landlord has an opportunity to file any objection with the court.
- Court will rule on papers received.
- Courts can schedule a hearing if landlord objects and hearing is deemed necessary at that time.
- Court will issue ruling via eFS .

The Process: If a Hearing is Scheduled

- If a hearing is scheduled, tenant will receive a Notice of Remote Hearing, or similar notice, from the court.
 - Notice will include information about remote options possible (usually by phone or Zoom) and directions on what email address or phone number you will be using for the remote hearing.
- Enter Zoom early, just in case there are technological difficulties.
- Call the courthouse if you or your client are having difficulties accessing the hearing. There should be a phone number on the notice.
- Attorney role generally is brief:
 - Usually provides a brief opening statement and brief closing statement.
 - Be prepared to respond to questions from Judge or issues raised by landlord.
- Judge usually wants to hear from the client.

The Process:

Post-Hearing

Check to make sure the record is deleted from MNCIS.

- This usually happens quickly, but may take up to 2 weeks.
- Call Court if it is not deleted.

Notify tenant screening agencies of the expungement.

- Send letter and copy of order to each.



Post- Expungement Issues

Eviction effects may linger even after expungement:

- Debt can still be collected in Conciliation Court
- Civil judgements/collection attempts will show up on credit reports
- Landlord reference
- Unregulated industries/data miners