**1. Review documents provided by VLN**

* Make sure to locate the complaint and affidavits of service.

**2. Consider contacting the landlord to gather further information**

* Does the landlord have a ledger for the client’s tenancy? Are there any outstanding balances?
* Will the landlord stipulate to an expungement or agree not to oppose an expungement?
	+ If landlord will stipulate to an expungement, it makes the process significantly easier.
	+ A stipulation or an agreement not to oppose an expungement usually occurs when a former tenant does not owe any money to the landlord.
* If there is an outstanding balance, will the landlord consider setting up a payment plan?

**3. Determine the legal basis for an expungement**

Expungement Type #1: Mandatory expungement under Minn. Stat. § 484.014, subd. 3

* + Tenant lived in a property that was “subject to contract for deed cancellation or foreclosure” and either (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 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.”

Expungement Type #2: Discretionary expungement under Minn. Stat. § 484.014, subd. 2

* + Court has discretion to order expungement if the plaintiff’s case “is sufficiently without basis in fact or law, which may be lack of jurisdiction over the case, 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.” Breaks down into a three part test:

**(1) Plaintiff’s case is sufficiently without basis in fact or law**

* + - * + *Improper service*

Refer to the affidavits of service, and check them against Minn. Stat. § 504B.331. Minnesota requires strict compliance with the service requirements.

Must serve the summons at least 7 days before the first court appearance, either through personal, substitute, or alternative service.

Personal service: named party may not serve the defendant.

*See Cramble v. Udell*, No. A13-0949, 2014 Minn. App. Unpub. LEXIS 323, at \*4 (Apr. 14, 2014) (holding that the district court did not have personal jurisdiction over the tenants because a named party served the tenants with the eviction summons).

Substitute service: If defendant could not be located in the county, landlord may serve by leaving a copy of the summons at the defendant’s last usual place of abode with a person of suitable age or discretion or leaving a copy at the property described in the complaint with a person of suitable age and discretion who occupies the premises.

Alternative service: defendant cannot be found in the county, and landlord serves defendant by posting the summons in a conspicuous place on the property for at least one week, and landlord attempted personal service at least twice, with one attempt between the hours of 6:00 p.m. and 10:00 p.m. Landlord must then file an affidavit stating that defendant cannot be found and that the landlord mailed a copy of the summons to the defendant’s last known address.

* + - * + *Inappropriate plaintiff*

Check the complaint against Minn. Stat. § 504B.285, subd. 1 and Minn. Stat. § 481.02, subd. 3(13).

Minn. Stat. § 504B.285, subd. 1: Only the “person entitled to the premises” may file an eviction action.

Plaintiff must be the property owner, or an authorized management agent.

Minnesota Rule of General Practice 603: If someone other than a principal or a duly licensed lawyer appears in Housing Court (Hennepin and Ramsey counties), check the complaint to determine whether there is a Power of Authority attached to the complaint at the time of filing. *See HNA Props. v. Moore*, 848 N.W.2d 238, 240 (Minn. Ct. App. 2014).

But note that an agent or lay advocate may appear without a written Power of Authority if the party being represented is present and is an individual.

If the property owner is a legal entity and commenced an action in district court (not conciliation court), did an attorney appear on the entity’s behalf? *See Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753, 755 (Minn. 1992); *Hinckley Square Assocs. v. Cervene*, 871 N.W.2d 426, 429 (Minn. Ct. App. 2015).

But note that this rule does not apply in Hennepin County or Ramsey County. Refer to point immediately above about Power of Authority.

In Minneapolis, must have a rental license. *See* Minneapolis Code of Ordinances § 244.1810.

*But see Wajda v. Schmeichel*, 2017 Minn. Dist. LEXIS 98 (“[E]ven though Landlord may not lawfully recover rent from Tenant under the Minneapolis City Ordinance [because Landlord did not have a rental license], he may seek to evict Tenant based on her failure to pay rent under the conditions of the lease or agreement, or her unlawful occupancy of the property.”).

*Habitability issues*

* + - * + Talk to client to spot any habitability issues, using Minn. Stat. § 504B.161 as a guide.
				+ Were the premises and all common areas fit for the use intended by the parties?
				+ Did the landlord keep the premises in reasonable repair during the term of the lease?

*See Fritz v. Warthen*, 213 N.W.2d 339, 341 (Minn. 1973) (holding that a tenant’s covenant to pay rent is dependent on landlord’s covenant of habitability and explaining that a tenant may use the breach of the covenant of habitability as a defense to an action for nonpayment of rent).

* + - * + Did the landlord keep the premises in compliance with the applicable health and safety laws of the state and local government?

Can check with the local inspection department to see if there are any inspection reports available.

*Breach of lease*

If landlord brought the eviction based on a breach of the lease, was the breach material?

Does the lease define the action/inaction as material?

* *See Pub. Hous. Agency of the City of Saint Paul v. Vang*, No. A10-1716, 2011 Minn. App. Unpub. LEXIS 397, at \*4–5 (May 3, 2011) (“Appellant argues that she did not commit a serious and material breach of the lease justifying eviction. But the lease specifically provides that failure to timely supply documentation of family income or composition constitutes a serious violation of the lease.”).

Did the trial court hold that the breach of the lease was material?

* *See Highland Mgmt. Grp. v. Moeller*, No. A19-0574, 2020 Minn. App. Unpub. LEXIS 73, at \*5 (Jan. 21, 2020) (“At the outset, we reject landlord's argument on appeal that we should consider this case as one involving lease nonrenewal resulting from tenant's material breach of the lease. . . . The record contains no indication that landlord alleged or argued that tenant committed a material breach of the lease as a ground for eviction, and nothing in the district court's order indicates that it addressed this issue in dismissing landlord's eviction action.”).

Did the eviction involve criminal activity?

* *See* Minn. Stat. § 504B.171.
* Did the landlord attach a copy of the lease to the complaint?
* *See Dominium Mgmt. Servs. LLC v. Lee*, No. A18-2116, 2019 Minn. App. Unpub. LEXIS 663, at \*6 (July 15, 2019) (affirming a district court’s decision in favor of a tenant in an eviction case because the landlord failed to attach a copy of the lease to the complaint or otherwise introduce the lease into the record, which meant the court had no way to determine whether the tenant violated the lease).

Did the landlord meet their burden to prove a breach of the lease?

*See Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 907 (Minn. Ct. App. 2018) (explaining that an eviction is a “summary proceeding” to determine an individual’s “possessory rights to property” and the landlord has the burden to prove a violation of the lease entitling the landlord to reclaim possession).

Did landlord waive the breach of the lease?

*Other defenses*

Defendant moved out prior to the eviction proceedings.

*See The Freund Haus, LLC v. \_\_\_\_\_*, No. 27-CV-HC-1-6609 (Minn. Dist. Ct. 4th Dist. July 22, 2014)(granting an eviction expungement because the action became moot after the defendant vacated the premises)

Defendant paid past due rent.

Retaliation defense

Prior to commencement of the eviction action, did the client:

* Make a request for repair? *See* Minn. Stat. § 504B.441.
* If landlord filed the eviction within 90 days of the tenant’s request for repair, landlord has the burden to prove a non-retaliatory reason for eviction.
* If landlord filed the eviction more than 90 days after the tenant’s request, the tenant has the burden to prove retaliatory eviction.
* *See also* *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019) (interpreting Minn. Stat. § 504B.441).
* Make a request for a reasonable accommodation?

*See Cramble v. Udell*, No. A13-0949, 2014 Minn. App. Unpub. LEXIS 323, at \*4 (Apr. 14, 2014) (suggesting that a tenant may be able to assert the denial of a reasonable accommodation request as a defense to eviction).

* Experience harassment from the landlord or the landlord’s agent?
	+ - *See Johnson v. Koski*, No. A15-0610, 2015 Minn. App. Unpub. LEXIS 1148 (Dec. 14, 2015) (evaluating a tenant’s claim that her eviction was retaliatory because of her harassment restraining order against her landlord).

**(2) The expungement is in the interests of justice**

* Can argue that it is unjust to maintain the records of the eviction if the action lacked a sufficient factual or legal basis.
* May also argue that expungement is in the interests of justice if it will help the client find a new place to live or improve their credit history.

**(3) The interests of justice are not outweighed by the public’s interest in knowing about the record**

* Does the client still owe money to the landlord?
* Was the eviction based on criminal activity?

Expungement Type #3: Expungement pursuant to court’s inherent authority to manage judicial records

* This is a common law basis for expungement of an eviction record.
	+ The Minnesota Supreme Court has held that courts have an inherent authority to grant expungements derived from their power to control court records. *See* *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981); *see also* Minn. Stat. § 504B.345, subd. 1(c)(2) (“The court may expunge the records relating to [an eviction 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.”).
		- The test is whether “expungement will yield a benefit to the petitioner 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.” *State v. C.A.*, 304 N.W.2d at 358.
		- A concurring opinion from Judge Connolly in an unpublished Minnesota Court of Appeals decision further elaborates on the factors courts may consider in an inherent authority expungement.
			* *See At Home Apartments, LLC v. D. B.*, No. A18-0512, 2019 Minn. App. Unpub. LEXIS 47, at \*10–11 (Jan. 14, 2019) (Connolly, J., concurring specially) (“I believe that in evaluating whether an expungement is justified under its inherent authority, the district court should consider all relevant facts including but not limited to: (1) whether any back-rent is owed, how much is owed, and if there is a payment plan in place—although I do not believe that an expungement should be automatically denied solely because any rent owing has not been paid; (2) a petitioner's eviction history; (3) the cause for the nonpayment of rent—whether it was due to economic hardship or a mere willful refusal; (4) the length of time since the petitioner's last eviction; (5) whether the eviction was for a material breach of the lease other than nonpayment of rent (e.g., conducting illegal activity on the leased premises); (6) the number of evictions with the same landlord as opposed to different landlords; and (7) the term of the lease.”).
* Can argue that there is both a statutory basis for expungement (expungement type #1 or #2) AND a common law basis for expungement.

**4. Draft the documents**

* Notice of Motion and Motion to Expunge Eviction Records
	+ Draft one motion for each eviction
	+ Consider drafting a separate Memorandum of Law in Support of Motion to Expunge
* Affidavit to Proceed In Forma Pauperis (IFP)
	+ Draft one motion for each eviction, and one for each client if there are multiple clients on one eviction
	+ Some courts may require a Proposed Order granting IFP status
* Certificate of Representation
* If outside of Hennepin and Ramsey counties, draft a Proposed Order granting the expungement
* See VLN’s website for sample documents

**5. File and serve the documents**

* Create a “waiver” payment account in the e-filing system labeled “IFP – [client last name]” before you go to e-file the documents.
	+ This will allow you to select the waiver as a payment account in the e-filing system, rather than listing your firm’s payment account.
* Mark the documents as “confidential” when you upload them to the e-filing system.
* Serve the Notice of Motion, the Motion, and the Notice of Hearing (or Administrative Review) as instructed by the court.
* If landlord did not use e-file/service in the underlying case, serve the landlord by mail and prepare an Affidavit of Service.

**6. Hearing or administrative review**

* Court will either schedule a hearing date or schedule the case for administrative review
	+ If scheduled for a hearing, notify your client of the time/date for the hearing.
	+ If scheduled for administrative review, landlord has an opportunity to file an objection.

**7. Await the court’s decision**

* If the court grants the expungement, prepare a letter to tenant screening agencies and include a copy of the expungement order with the letter.
	+ Minn. Stat. § 504B.241, subd. 4 requires tenant screening agencies to delete records of expunged court files.
* If the court denies the expungement, communicate that fact and the reason for the denial to the client.
	+ If the court denied the expungement because the client still owes money to the landlord, determine whether there are any resources available to pay down the outstanding debt. If the client is able to pay down or eliminate the debt, consider filing a new petition for expungement.