



Tip of the Month June 2021

A Step-by-Step Overview of Full Representation Rent Escrow Cases

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The law is clear: Landlords have an immutable responsibility to keep residential rental properties in habitable condition. Minn. Stat. 504B.161 lays out what “habitable” means in four specific covenants of habitability that must be met in order for a landlord to rent a residential unit. Those covenants include that the rental property must be: (1) fit for the intended purpose, (2) in good repair, (3) reasonably energy efficient and (4) in compliance with applicable health and safety codes. Parties cannot contract around these obligations, and neither the burden nor cost of the repair can be switched to the tenant.¹

When landlords do not keep rental units habitable and do not respond to tenants’ requests for repairs, tenants may enforce the covenants of habitability by bringing a rent escrow action in court. Rent escrow actions can be a powerful tool for tenants: they allow them to pay rent directly into court and have a judicial officer decide which repairs must be made.

VLN’s Housing Program seeks to place many of these “rent escrow” cases each year. What follows is a step-by-step overview for potential volunteers – if the below inspires you to take a case, [please reach out to us!](#)

Once you get assigned a rent escrow case, here is what you can expect:

1. *Review initial paperwork:* Once you agree to take a rent escrow case, VLN will send you the contact and demographic information for the client and any other paperwork or documentation the tenant has provided to VLN. If the case is already filed with the court, VLN will send you the court filings. VLN will also send you an electronic representation agreement to review and sign with the client when you are ready.
2. *Interview your client:* The paperwork will give you a sense of what is going on, but you will need to talk to your client to hear their story and fill in the details. These situations generally are fact-intensive. For repair problems, a picture can be worth a lot. Get photographs of every repair issue from the client. There may be several separate habitability or breach of lease² issues. For each separate issue, find out the details of the problem, how long the problem(s) has persisted, efforts by the tenant to notify the landlord, whether a 14-day notice has been given to the landlord, any actions thus far taken by the landlord to fix the problem(s), and harm or damage caused by the problems. Ask your client what result they want from the case. **Verify the client is current on their rent**, or that they can deposit all back-rent owed into an escrow account with the court. If they cannot pay their rent into a court escrow account as the case proceeds, the case could be dismissed.

¹ The one exception here is “when the repair is caused by the willful, malicious or irresponsible conduct of the tenant or licensee or a person under the direction or control of the tenant or licensee.” Minn. Stat. 504B.161, Subd. 1(2).

² Rent Escrow actions can also be used to enforce other tenant rights, such as lease provisions and improper entry into the unit by the landlord.

3. *Consider getting a city inspector to investigate the property.* Inspection reports carry weight in court. For more complex issues, such as pest infestation or mold, city inspectors can lay a factual groundwork that you use as evidence. In Minneapolis, your client can call 3-1-1 to schedule an inspection. For other cities, use the Code Enforcement Manual [here](#) to find out who to call to request an inspection.

4. *Give 14-day notice to the landlord to repair the problem.* If notice has not already been given, you'll need to provide a 14-day notice to the landlord. There is no special format for the notice, but provide it in writing, citing each problem and citing Minn. Stat. 504B.385.

5. *Assess landlord compliance after 14-day notice.* If all requested repairs are fixed to your client's satisfaction, you're done! If the problems are not fully cured within 14 days, you can proceed with filing the Rent Escrow Affidavit with the court to begin a rent escrow action.

6. *File the Rent Escrow Affidavit.* Form available [here](#). You will need to determine, among other things, an estimate on the total cost of repairs, rent abatement amount, and any consequential damages. You will also need to file a petition to waive court fees, also known as an IFP. The Court will serve the landlord.

7. *Attend the initial appearance.* The initial appearance may contain a combination of the following:

7a. *Settlement negotiation.* As in all cases, judges encourage an agreed settlement rather than a trial. This may be your first time to talk to the landlord, so have an initial settlement offer prepared, and talk to your client beforehand about how far they are willing to negotiate down. Continue these negotiations as the case continues, if no agreement is reached today.

7b. *Pre-trial motions.* The landlord may present a motion to dismiss before the judge for improper 14-day notice or some other matter.

7c. *Judge sets an Evidentiary hearing.* If there are disputes about whether the repair issues exist, the judge will set an evidentiary hearing.

7d. *Judge Orders repairs and sets compliance hearing.* If the landlord does not deny some or all of the repair issues alleged in the complaint, the judge may order the landlord to make repairs by a certain date, and set a compliance hearing.

These can all occur at the same hearing. For example, a judge may order repairs done on uncontested repair issues, and set an evidentiary hearing on contested repair issues.

8. *Prepare for and attend Evidentiary hearing (if necessary).* Organize your evidence and submit as exhibits to the court. Present the evidence to the judge. The judge will either order repairs and set a compliance hearing on some or all of the alleged repair issues, or will dismiss the case if they don't find any repairs were needed.

9. *Assess landlord compliance with court order.* Talk to your client about any repair work done. Are the repairs sufficient? If not, get photographs and other evidence for court.

10. *Attend compliance hearing.* If the repair work was not fully completed, inform the judge and present evidence. The judge may order additional work done. If so, go back to step 8. **Be prepared to argue in court and present evidence on the issue of money owed** to your client for matters such as past rent abatement and actual damages. Arguments may be postponed to another hearing date.