

# EVICTIION EXPUNGEMENT



Presented by:

Elizabeth Kelly

Housing Project Attorney

Volunteer Lawyers Network

600 Nicollet Mall, Suite 390A

Minneapolis, MN 55402

[Beth.Kelly@vlmn.org](mailto:Beth.Kelly@vlmn.org) – 612-752-6608

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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
- 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>



# Expungement without a separate motion

- Evictions can be expunged at the initial appearance hearing
  - Request by tenant/counsel when it is dismissed
  - Settlement Agreement between the parties
    - Affidavit of Compliance
      - Initiated by Landlord or Tenant?
    - Caption change
    - Agree to not dispute future expungement
    - Automatic
- Stipulation by the Parties

# Three Legal Standards for Eviction Expungement

Mandatory Authority

Statutory/Discretionary Authority

Common Law/Inherent Authority

## Mandatory Authority: Foreclosure or Contract for Deed

- 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, 1b, or 1c, 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

*Koski v. Johnson*, 837  
N.W.2d 739 (Minn. Ct. App.  
2013)

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 -- Minn. Rules of General Practice 603 (Hennepin, Ramsey)
- Must have a rental license
  - City of Minneapolis ordinance
  - City of St. Paul requires *Fire Certificate of Occupancy*
  - Another city? Look up ordinances to see requirements



# 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.
  - Burden on the landlord to prove breach
  - Lease must be attached to the eviction complaint
  - Breach must be “material”
  - Prohibited behavior and consequence must be included in lease (accept for criminal behavior)
  - Waiver by the landlord?



# Other defenses

- Tenant no longer living in the property at the time of the eviction—eviction action ONLY about possession
- Rent Already Paid
- Partial Payment
- Retaliatory eviction protections
- 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"> <li>• No money judgment ordered</li> </ul> | 1 year<br><br>FY + 3 years | Destroy 1 year after file is closed<br><br>If financial activity is associated destroy<br>FY + 3 yr after final disposition |                                  |
|     | <ul style="list-style-type: none"> <li>• Money judgment ordered</li> </ul>    | 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](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 Expungement 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?

# The Process: Drafting

VLN sends you underlying documents for each eviction case

- VLN provides all of the court record documents available
- Case may be so old that the court no longer has records.

Blank forms are available on our website

- [www.vlnmn.org/housing](http://www.vlnmn.org/housing)

Draft Motion for Eviction Expungement

- Templates on VLN website for housing
- One motion for each eviction

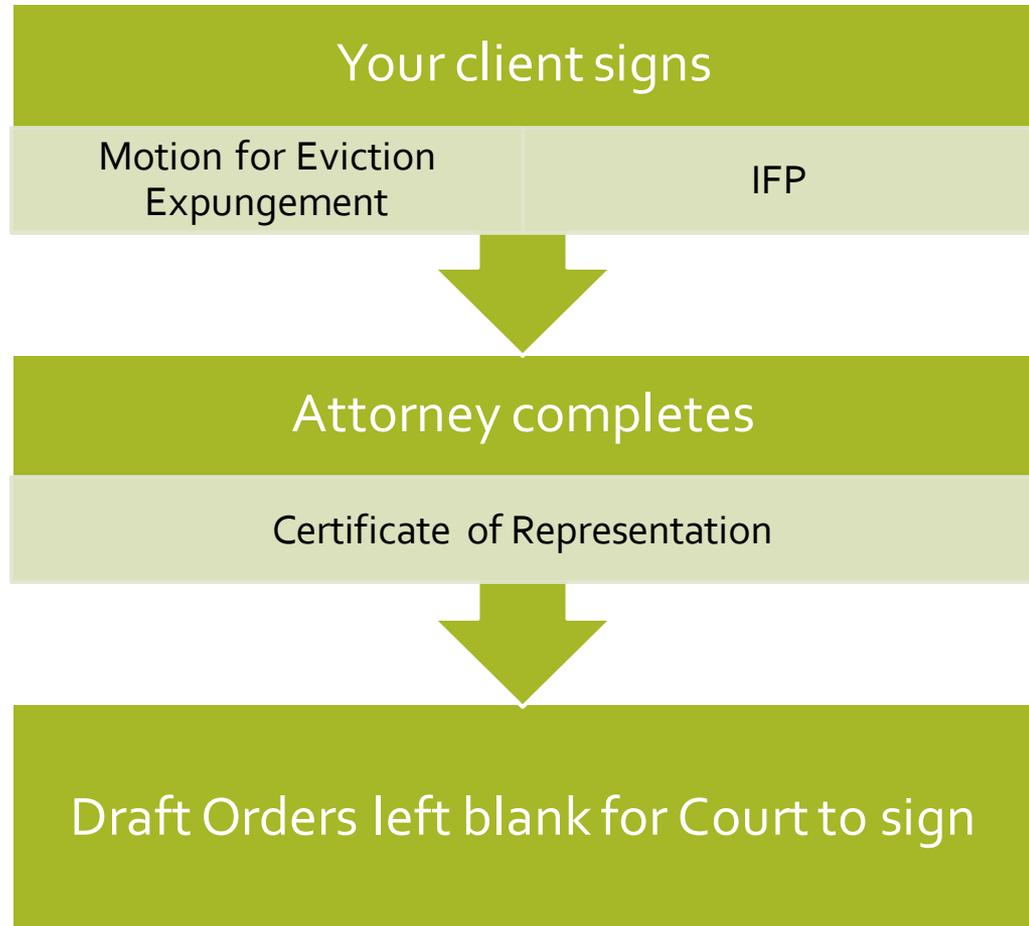
Draft In Forma Pauperis Form (IFP)

- One for each eviction
- One for each tenant seeking eviction
- Use short form IFP in Hennepin and Ramsey Counties

Draft Proposed Orders

- Granting IFP (except Hennepin)
- Granting Expungement (except Hennepin and Ramsey)

# The Process: Signing documents



# 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 Granting IFP (except Hennepin)
- Proposed Order Granting Expungement Motion (except Hennepin and Ramsey)

IFP must be filed as “confidential”

Court issues IFP Order and assigns hearing/review date by Court Order

Attorney serves Notice of Admin Review or Hearing as requested by the court, usually 14 days before the hearing

Opposing party may file response with Court to your Motion

Attorney e-files Affidavit of Service at least 3 business days before the hearing

- Affidavit of Service by Mail; OR
- Affidavit of e-Service

## The Process: Administrative Review (Hennepin County)

- Tenant receives a Notice of Administrative Review of Expungement Hearing, or similar notice, from the court.
  - Notice states service requirements.
  - Notice states that NO hearing will occur.
- Landlord has an opportunity to file an objection/response with the court.
- Court rules on papers received.
- Parties can request a hearing if desired.
- Court issues decision via eFS .

# The Process: If a Hearing is Scheduled

If hearing scheduled, court issues Notice of Remote Hearing

- Contains Zoom instructions and alternative call-in number

Emphasize to your client that appearance via video is preferable

Enter Zoom early, just in case there are technology difficulties.

Call the courthouse if you or your client are having difficulties accessing the hearing. Use call-in number

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.

- Prepare client in advance for short statement about how eviction has affected client
- Court may ask detailed questions about facts of eviction
- Remind client that if he or she does not remember, state that to the court. Some of these evictions are fairly old.



# The Process: Post-Hearing

## Check

Check record is deleted from MNCIS(MCRO)

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

## Notify

Notify tenant screening agencies of the expungement.

- Send letter and copy of order to each.
- Template available

## Send

Send closing letter to client with copy of Expungement Order and tenant screen letter

- Template available

## 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

**THANK YOU!**

Elizabeth Kelly

Beth.Kelly@vlmn.org

612-752-6608