

Eviction Defense Checklist (updated 5.26.22)

Apply to ALL cases

Service (Minn. Stat. 504B.331)	
	Summons and complaint delivered <i>at least 7 days before court hearing</i> or if mail and posting for service, then mailed and posted <i>at least 7 days before hearing</i> . <ul style="list-style-type: none"> • Weekends included in 7 days
	No service allowed on legal holidays. Minn. Stat. 645.44
	No service by plaintiff or plaintiff's agents (property manager, member of LLC). Minn. R. Civ. P. 402
	Service only allowed at home address of tenant
	If substitute service , person served must: <ul style="list-style-type: none"> • Be of suitable age and discretion • Live at the property
	Mail and post if personal or substitute service not possible <ul style="list-style-type: none"> • Tried to personally serve on 2 different days (1x between 6-10pm), and filed an affidavit of not found; • Mailed summons and complaint to tenant and filed an affidavit of mailing; and • Posted summons and complaint on property after affidavit of not found was filed, and filed an affidavit of posting
	In Hennepin and Ramsey Counties, affidavits of service must be filed at least 3 days prior to the hearing. Minn. R. Gen. Prac. 605
	If expedited case must be served within 24 hours of the summons being issued. Minn. Stat. 504B.321 Subd. 2(c)
Preconditions for Recovery of Premises	
	Is Plaintiff owner of the property or authorized agent? Minn. Stat. 504B.285, subd. 1(a); Minn. Gen. R. Prac. 603 <ul style="list-style-type: none"> • Check property records. ✓ <i>Hennepin County</i>: https://www.hennepin.us/residents/property/property-information-search ✓ <i>Ramsey County</i>: https://www.ramseycounty.us/residents/property-home/property-tax-and-value-lookup ✓ <i>Anoka County</i>: https://prtpublicweb.co.anoka.mn.us/search/commonsearch.aspx?mode=realprop If agent, request proof of relationship from plaintiff.
	In Hennepin and Ramsey County, if the person appearing on behalf of the plaintiff is not an attorney, a proper power of authority must be filed along with the complaint. Minn. R. Gen. Prac. 603. In all other counties, corporate entities must be represented by an attorney. <i>Nicollet Restoration, Inc. v. Turnham</i> , 486 N.W.2d 753 (Minn. 1992)
	Did Plaintiff post principal names and physical address for service on the property or was this information disclosed to tenant at least 30 days before the eviction filing? Minn. Stat. 504B.181
	Did the complaint state facts which authorize recovery of the premises? Minn. Stat. 504B.321
	If landlord of residential building with 12 or more units, was a written lease provided? Minn. Stat. 504B.111
	If lease has a notice requirement, did Plaintiff give notice and attach to complaint?

Other issues	
	<p>Does landlord have a rental license under Ordinance requirements of city where property is located?</p> <ul style="list-style-type: none"> • City of Minneapolis: http://www2.minneapolismn.gov/propertyinfo/ • City of St. Paul: https://online.stpaul.gov/stpaulportal/sfjsp?interviewID=PublicSearch
	<p>Are there repair issues in the rental unit?</p> <ul style="list-style-type: none"> • Is the eviction retaliatory after request for repairs? Minn. Stat. 504B.285 subd. 2, <i>Cent. Hous. Assocs., LP v. Olson</i>, 929 NW.2d 398 (Minn. 2019) <p>Are there repairs needed that mean rent abatement as part of settlement?</p>
	Does tenant have a disability that the landlord had not reasonably accommodated? 42 U.S.C. §3604(f)(3).
	Tenant is a victim of domestic abuse, criminal sexual conduct or stalking and the basis for eviction is a result of this abuse. Minn. Stat. 504B.285, subd. 1(b); 504B.206, subd. 1(a).
	Phone calls to police or other emergency services were made by tenant in response to domestic abuse or any other conduct. Minn. Stat. 504B.205
	<p>If residential property is a covered property under the CARES Act, there is a 30-day notice requirement. See 7 and 30-day notice practice tip.</p> <ul style="list-style-type: none"> • Property participates in a covered housing program (as defined in section 41411(a) of the Violence Against Women Act 34 USC § 12491(a)) • Property participates in the Rural Housing Voucher Program (per 42 USC § 1490r) • Property has federally backed mortgage loan <p>**This most clearly applies in nonpayment cases, but can be argued more broadly.</p>

Apply based on cause of Action

Holding Over After Termination or Non-renewal of Lease. See practice tip	
	<p>Verify that proper notice of non-renewal given</p> <ul style="list-style-type: none"> • Check lease (current or former) • If no lease, notice period is one full payment period or 3 months (whichever is less). 504B.135. • Example of month-to-month notice period: if move-out date is July 1, notice must be given by May 31.
	Notice of non-renewal must be in writing
	Waiver by subsequent acceptance of rent, unless lease has non-waiver clause
	Was non-renewal retaliatory?
Material Breach of Lease	
	<p>Written Notice Given?</p> <ul style="list-style-type: none"> • 30-day notice required for Brooklyn Center (Brooklyn Center City Code 12-912D) <ul style="list-style-type: none"> ○ The name, mailing address, and telephone number of owner ○ Description of the specific conduct and person who committed violation ○ Notification that tenant has right to correct the alleged breach ○ Notification how the tenant may correct the alleged breach ○ Deadline by which breach must be corrected to avoid eviction, which must be at least 30 after notice ○ Copy of lease ○ Info about 211 and LawHelp MN

	Breach alleged must actually be forbidden in lease
	Breach must be material (e.g. dirty dishes are not material)
	Can Breach be cured?
	Lease must have right of reentry clause
	Landlord can waive breach of lease by subsequently accepting rent unless lease has nonwaiver clause
Nonpayment of Rent	
	<p>Written Notice given?</p> <ul style="list-style-type: none"> • 14-day notice requirement for Mpls (Minneapolis Code of Ordinances 244.2060) <ul style="list-style-type: none"> ○ Delivered personally or by 1st class mail ○ Includes total amount due, with breakdown of accounting ○ Provides name and address of person to receive payment ○ Provides description of how to access legal and financial assistance through city website • 7-day notice requirement for St. Louis Park (St. Louis Park City Code Sec. 8-337) <ul style="list-style-type: none"> ○ Same requirements as Minneapolis ordinance • 30-day notice requirement for Brooklyn Center (Brooklyn Center City Code 12-912D) <ul style="list-style-type: none"> ○ The name, mailing address, telephone of person authorized to receive rent ○ Total amount of money due ○ A specific accounting ○ Deadline for payment before eviction is filed, which must be at least 30 days ○ Info about 211 and LawHelp MN
	<p>Is rent hike in past year too high?</p> <ul style="list-style-type: none"> • St. Paul, only can be raise 3% per year starting May 2022. (St. Paul City Code 193A.03)
	Waiver by subsequent accept of rent, unless lease has non-waiver clause
	Can client redeem (make all payments now or before the writ is issued)? 504B.291, subd 1
	Can landlord and tenant agree to a payment plan?
Statutory violation (504B.171)- drugs, guns, prostitution, stolen property, domestic violence, sex crimes, harassment	
	Fact-heavy analysis. Vague allegations may imply a weak case for plaintiff
	Language in statute is very specific. Check allegations against statute to verify it applies.
	Verify required knowledge of crime. E.g. did client know friends brought drugs/guns into property
	Does client have legal prescriptions for drugs?