



Tip of the Month January 2024

Eviction Expungement Changes

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The Legislature made many changes to the law surrounding eviction expungements which come into effect January 1, 2024. This tip will start with an overview of the importance of eviction expungement and defining eviction expungement, and then review of the law prior to 2024. Finally, this tip will cover the new law starting January 1, 2024 and some issues raised by the new laws.

The Importance of Eviction Expungement:

Eviction expungements are important because they keep people from being homeless or living in sub-standard conditions. Most landlords will not rent to a prospective tenant with an eviction on their record. Those that will often charge more in rent or fees or provide an apartment with sub-standard conditions. This keeps the person with an eviction on their record and their family either homeless or living in conditions that are not affordable, safe, and healthy. Under pre-2024 laws, an eviction stayed on tenants' records until expungement regardless of whether they won, lost or settled a case.

Eviction Expungement Defined:

As soon as an eviction case is filed, the eviction case is linked to the tenant's name in the public court records. There are three ways to remove or conceal a tenant's eviction record.

1. **Expungement**: Permanently removes an eviction case from the court's records.
2. **Confidentiality**: Conceals an eviction case from the general public, but the parties to the case may still access it and file into it.
3. **Caption/Index Change**: Removes the tenant's name from the case record and index such that a court database search of the tenant's name will not result in the eviction

being revealed. The case, however, can still be accessed by the public using the court's case number.

Eviction Expungement Motions Before January 1, 2024:

Before January 1, 2024, there were three bases for expunging an eviction through a motion: mandatory expungement, statutory discretionary authority, and the inherent authority of the court.

1. Mandatory Expungement: The only basis for a mandatory expungement had to do with contract for deed cancellations and mortgage foreclosures. (Previous Minn. Stat. 484.014, Subd. 3.). A motion was still required to request an expungement.
2. Statutory Discretionary Expungement: Pursuant to Minn. Stat. §484.014, subd. 2, eviction cases could be expunged if the court found that plaintiff's case was (a) sufficiently without basis in fact or law, (b) it was clearly in the interests of justice to expunge the case, and (c) those interests were not outweighed by the public's interest in knowing about the case.
3. Inherent Authority Expungement: For an inherent authority expungement, the tenant had to prove that expungement was clearly in the interest of justice and that those interests of justice were not outweighed by the public's interest in knowing about the eviction. The standard for an inherent authority expungement was similar to a statutory discretionary authority expungement, except there was no requirement the landlord's case be without basis in fact or law.

Eviction Expungements On or After January 1, 2024:

Some of the biggest changes in the new law are that many cases can now be expunged without having to go through the arduous motion practice. Changes were made to both mandatory and statutory discretionary authority expungements. Because inherent authority is derived from case law and not statute, there are no major changes to inherent authority expungement coming into effect in 2024.

- A. Mandatory Authority: Minn. Stat. §484.014 now provides for several additional bases for mandatory expungement, and most do not require a motion to be filed. Those bases are:

1. Cases having to do with contracts for deed and mortgages where the time for contract cancellation or foreclosure redemption has expired, and the defendant vacated prior to commencement of the eviction action; or did not receive a to vacate on a date prior to commencement of the eviction case;
2. The tenant won;
3. The court dismissed the eviction;
4. The parties have agreed to an expungement;
5. It has been three years since the eviction;
6. Upon motion of a defendant, if the case settled and the defendant fulfilled the terms of the settlement agreement; and
7. Upon motion of the defendant if the grounds for the eviction were
 - a. Violation of section 504B.171 (Covenant of landlord and tenant not to allow illegal activities) or any other claim of breach regardless of when the original eviction was ordered; and
 - b. The tenant could receive an automatic expungement under Section 609A.055 (Automatic expungement of certain cannabis [criminal] offenses); or
 - c. The breach of lease solely for possession of marijuana/tetrahydrocannabinols.

At this time, it is not clear what the Court requires to expunge an eviction where a motion is not required. Our starting point will be to file a letter informing the Court of the circumstances of the case and requesting expungement. A sample of that letter will be available on our website.

A. Statutory Discretionary Expungement.

The standard for statutory discretionary expungement used to require some showing of a defect in the case – that the case was without basis in fact or law. That requirement has been eliminated. The new standard applicable in 2024 for eviction expungement under the court’s discretionary power is simply that “the court finds the expungement is clearly in the interests of justice and those interests are not outweighed by the public’s interest in knowing about the record.” Minn. Stat. §484.014 Subd. 2.

This makes the statutory discretionary expungement standard the same as the previous inherent authority standard. We believe the court will use the same factors for using its statutory discretionary authority that was previously used under the court’s inherent authority with the addition of whether the eviction was proper in the first place. Those factors are:

- a. whether any back-rent is owed, how much is owed, and if there is a payment plan in place;

- b. the tenant's eviction history;
- c. the cause for the nonpayment of rent – whether it was due to economic hardship or a mere willful refusal;
- d. the length of time since the petitioner's last eviction;
- e. whether the eviction was for a material breach of the lease other than non-payment;
- f. the number of evictions with the same landlord as opposed to different landlords; and
- g. the term of the lease.

At Home Apts., LLC v. D. B., No. A18-0512, 2019 Minn. App. Unpub. LEXIS 47 at *10-11, 2019 WL 178509 at *4 (Minn. Ct. App. Jan. 14, 2019) (Unpublished)

Issues Raised by the New Laws:

While there has been no public statement about how the court will apply the new expungement laws, we have heard through the grape vines that the court does not intend to apply the laws “retroactively.” We do not believe applying the new laws to evictions which were final before January 1, 2024 is a retroactive application. However, it is not yet clear what the Court's approach will be. Stay tuned.