

Eviction Defense Checklist (for use after 1.1.24)

Last updated 1.5.23

Apply to ALL cases: [New 2024 laws in green]

Right To Court Appointed Counsel (Minn. Stat. 504B.268)	
	<p>Only exists when:</p> <ul style="list-style-type: none"> Plaintiff is a public housing entity (e.g. Minneapolis Public Housing, St. Paul Public Housing, Metropolitan HRA), and Eviction is for breach of lease.
Service (Minn. Stat. 504B.331)	
	<p>Service of summons and complaint must be completed <i>at least 7 days before court hearing</i> whether done by personal service, substitute service or posting.</p> <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.
	<p>If substitute service, person served must:</p> <ul style="list-style-type: none"> Be of suitable age and discretion Live at the property
	<p>For cases filed on or after 1/1/24: If service by posting, personal or substitute service not possible:</p> <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; and *Filed an affidavit stating that the summons and complaint were mailed to tenant's last known address; or *Communicated to the tenant the time, date and place of the hearing by at least one form of written communication the landlord regularly uses to communicate with the tenant that has a time and date stamp; and Posted summons and complaint on property 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 (personal or substitute) within 24 hours of the summons being issued unless the court has authorized otherwise. Minn. Stat. 504B.321 Subd. 2(c).
Preconditions for Recovery of Premises	
	<p>Plaintiff must be the owner of the property or authorized agent. Minn. Stat. 504B.285, subd. 1(a); Minn. Gen. R. Prac. 603.</p> <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.
	<p>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.</p> <p><i>Nicollet Restoration, Inc. v. Turnham</i>, 486 N.W.2d 753 (Minn. 1992).</p>

	Plaintiff must post name and physical address for service on the landlord or otherwise disclose this information at least 30 days before the eviction filing. Minn. Stat. 504B.181.
	The complaint must state facts which authorize recovery of the premises. Minn. Stat. 504B.321
	A written lease must be provided if the building tenant lives in has 12 or more units. Minn. Stat. 504B.111.
	If the lease has a notice requirement, Plaintiff must comply with that notice provision.
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>For cases filed after 1/1/24 - Complaint must include:</p> <ul style="list-style-type: none"> Most recent lease in existence, if any, and relevant addenda; and A statement of whether tenancy is a subsidized tenancy, including the name of the agency that administers the subsidy. If evicting for nonpayment - a detailed itemized accounting listing amounts due. If evicting for breach of lease - the clause of the lease of the alleged violated, dates on which violation took place and clause granted right to evict based on conduct (right of re-entry clause). If evicting for holdover – a copy of the notice to vacate. If evicting for 504B.171 violation – specific statement of the conduct and date of conduct. <p>Minn. Stat. 504B.321, subd 3. The court MUST dismiss and expunge any eviction if this section is not complied with. Sub. 5</p>
	<p>Are there repair issues in the rental unit?</p> <ul style="list-style-type: none"> Is the heat maintained at 68°F October through April? Minn. Stat. 504B.161 Has the landlord entered without proper 24 hour notice? Minn. Stat. 504B.211, subd.2 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) Are repairs needed that mean rent abatement as part of settlement?
	Does tenant have a disability that the landlord has not reasonably accommodated? 42 U.S.C. §3604(f)(3).
	Is tenant 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).
	Does client have a documented medical infirmity, as defined in Minn. Stat. 504B.266 and did the client give 2 months written notice to terminate the lease? Minn. Stat 504B.266. (For leases signed 1/1/24 or later)
	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.</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

Nonpayment of Rent	
	<p>Written notice required for all nonpayment cases –statewide–:</p> <ul style="list-style-type: none"> • 14-day notice requirement for all nonpayment cases (Minn. Stat. 504B.321). <ul style="list-style-type: none"> ○ Delivered personally or by 1st class mail; ○ Must be attached to the complaint; ○ Includes total amount due, with breakdown of unpaid rent, late fees and other fees; ○ Provides and address of person to receive payment; and ○ Includes the following statements: <ul style="list-style-type: none"> ✓ “To apply for financial help, contact your local county or Tribal social services office, apply online at MN Benefits.mn.gov or call the United Way toll-free information line by dialing 2-1-1 or 800-543-7709.” ✓ “You have the right to seek legal help. If you can’t afford a lawyer, free legal help may be available. Contact Legal Aid or visit www.LawHelpMN.org to know your rights and find your local Legal Aid office.” ✓ “You landlord can file an eviction case if you do not pay the total amount due to move out within 14 days from the date of this notice. Some local governments may have an eviction notice period longer than 14 days.”
	<p>Written notice required for specific municipalities:</p> <ul style="list-style-type: none"> • 14-day notice requirement for Minneapolis (Minneapolis Code of Ordinances 244.2060) <ul style="list-style-type: none"> ○ Follow all the statewide requirements Delivered personally or by 1st class mail; ○ Includes total amount due, with breakdown of unpaid rent, late fees and other charges under the lease; ○ Provides name and address of person to receive payment; ○ Provides description of how to access legal and financial assistance through the city website; and ○ State that the Owner may bring an action following the expiration of the notice period if the tenant fails to pay the amount due or vacate. • 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; ○ Includes total amount due, with breakdown of unpaid rent, late fees and other charges; ○ Deadline for payment before eviction is filed, which must be at least 30 days; ○ Information about 211 and LawHelpMN; and ○ Notifying the tenant that they might be evicted if they do not pay the rent by the deadline.
	<p>Does the tenant owe the rent alleged?</p> <ul style="list-style-type: none"> • Landlord must give receipts for cash payments, Minn. Stat. 504B.118. • Tenant has receipts or copies of money orders. Minn. Stat. 504B.291, sub. 1.
	<p>Does the unit need repairs? If yes, rent owed may be reduced and future rent abated until repairs completed. Minn. Stat. 504B.161, <i>Fritz v. Warthen</i>, 213 N.W.2d 339 (Minn. 1973).</p>

	If St. Paul property, was rent increased more than 3% in the past year? If so, did any of the rent stabilization exceptions apply? (St. Paul City Code 193A.03)
	Was rent accepted after the eviction was filed? If so, it is waiver of the eviction UNLESS the lease has a non-waiver clause (permitting landlord to accept payments without losing the right to evict).
	Non-optional fees must be disclosed on first page of lease and in any advertisements of the property. Minn. Stat. 504B.120 (for leases signed 1/1/24 or later)
	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?

Holding Over After Termination or Non-renewal of Lease.	
	<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 or discriminatory?
Material Breach of Lease	
	<p>30-day notice required for Brooklyn Center (Brooklyn Center City Code 12-912D). The notice must include:</p> <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; and • Information about 211 and LawHelp MN.
	Breach alleged must be forbidden in lease.
	Breach must be material (e.g. dirty dishes are not material).
	Can breach be reasonably cured?
	Lease must have right of reentry clause.
	Landlord can waive breach of lease by subsequently accepting rent unless lease has non-waiver clause.
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
	Eviction for marijuana/cannabis use/possession within legal limits is prohibited, except for smoking. Subd. 1(c).
	Subd. 2(a) – limits landlord from imposing penalty on tenant for actions that took place off the premises unless (1) the conduct constitutes a crime of violence against tenant, guest of tenant, landlord or landlord's employee or (2) the conduct results in a conviction against a person unrelated to the premises.

