Eviction Expungement Checklist 2024

|  |  |
| --- | --- |
|  | Do you have the Court documents and Register of Action for each eviction, if available? |
|  | Consider contacting Landlord to gather further information |
|  | * Will Landlord stipulate to an expungement? |
|  | * Or will Landlord agree to not oppose expungement |
|  | * If there is an outstanding balance owed to the landlord and it is likely to stand in the way of an expungement:   + Will Landlord consider setting up a payment plan if client is in position to make payments?   + Request a copy of the ledger for the client’s tenancy to confirm outstanding balance. |
|  | Was the eviction final before January 1, 2024? If so, see Pre-2024 Eviction Expungement Checklist and cover those bases as well unless you are in Hennepin County where you can proceed under the new statute. |
|  | Which *Type of Expungement* applies to your client’s case? |
|  | **Mandatory Expungement/No Motion Required:** Court must expunge and no motion is required – file a letter explaining the facts and asking that the eviction be expunged if: |
|  | * Tenant lived in property subject to contract for deed or foreclosure AND   + Time for contract cancellation or foreclosure redemption has expired and Tenant vacated property prior to commencement of eviction action   + OR Tenant during contract cancellation or foreclosure redemption and did not receive notice to vacate prior to commencement of eviction case |
|  | * Tenant prevailed in the eviction action |
|  | * The eviction case was dismissed for any reason |
|  | * The parties have agreed to an expungement |
|  | * It has been three years since the eviction was ordered |
|  | **Mandatory Expungement/Motion Required:** The court must expunge upon a motion if: |
|  | * The case settled and the defendant fulfilled the terms of the settlement agreement |
|  | * The grounds for the eviction were:   + Violation of section 504B.171 (Covenant of landlord and tenant not to allow illegal activities); and   + Breach of lease solely for possession of marijuana/ tetrahydrocannabinols; or   + The tenant could receive an automatic expungement under Section 609A.055 (Automatic expungement of certain cannabis [criminal] offenses). |
|  | **Statutory Discretionary Expungement** |
|  | * Is expungement in the interests of justice? |
|  | * + Will expungement yield a benefit to the tenant commensurate with the disadvantages to the public from elimination of the record and burden on the court in issuing, enforcing and monitoring an expungement? Use the facts of your case: will the expungement make it easier or possible for the tenant to find housing? Are there children? Is the tenant living in a shelter? Was the eviction improper in the first place? Is the tenant in a better position now to pay rent and be a quality tenant? |
|  | * Are the interests of justice outweighed by the public’s interest in knowing about the record? |
|  | * Factors to Consider   + Is back rent owed? Is there a payment plan?   + What is the tenant’s eviction history?   + Is the non-payment due to personal or economic hardship?   + Length of time since the tenant’s last eviction?   + Was it a material breach of lease case or something else other than non-payment of rent?   + Number of evictions with the same landlord as opposed to different landlords   + What are the terms of the lease?   + Was the eviction proper in the first place? (See Eviction Defense Checklist.) * Was a 14-day notice provided? * Was service proper? * Proper plaintiff? * Habitability issues? * Breach of lease issues? * Other defenses? |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  |
|  | * Are the records outside the Court’s record retention policy? |
|  | * Other arguments… |
|  | **Expungement Motion to be filed In the existing eviction case** |
|  | **Paperwork needed for Expungement Case** |
|  | 1. Signed Representation Agreement with client |
|  | 1. Fee waiver Affidavit Specific to Your County (one for each case and each tenant) |
|  | 1. Certificate of Representation (one for each case) |
|  | 1. Expungement Motion (one for each case) |
|  | 1. Affidavit of Service (one for each case) |
|  | **File with Court** |
|  | 1. Expungement Motion (initial filing) 2. Certificate of Representation (initial filing) 3. Fee Waiver Affidavit Specific to Your County (initial filing) 4. Affidavit of Service (later) |
|  | **Service By Mail or E-Service** |
|  | 1. Wait to serve documents until Court has issued hearing date |
|  | 1. Documents to serve    1. Order for Administrative Review or other scheduling order from court    2. Expungement Motion and any attachments |
|  | 1. Serve by Mail or E-Serve    1. Plaintiff listed in case, or    2. Plaintiff’s Attorney if listed in Register of Action |
|  | 1. File Affidavit of Service with Court |
|  | **After court decision** |
|  | * If Expunged   + Create letter to send tenant screening agencies   + Send letter plus copy of Expungement Order to tenant screening agencies   + Confirm on MNCIS that case has been expunged from Court record (wait 7-10 days to confirm) |
|  | * If not expunged   + Discuss with client why not expunged and what client needs to do to help get it expunged in the future or if waiting a year would be likely to change the outcome.   + Explain that once client does more to help with Court’s reasons for denial or waits a full year, contact VLN about filing again. |
|  | * For all clients, create and send a closing letter to client completing the representation—make sure to attach copies of all of the Court Orders and any letters to tenant screening agencies if applicable |
|  | * Eviction expungements remove record of eviction, but not record of debt owed. If client needs additional help with credit reports or other credit reporting issues, please refer to VLN’s creditor/debtor program. |