

Eviction Expungement Checklist

Do you have the Court documents and Register of Action for each eviction, if available?
Consider contacting Landlord to gather further information
<ul style="list-style-type: none"> • Will Landlord stipulate to an expungement?
<ul style="list-style-type: none"> • Or will Landlord agree to not oppose expungement
<ul style="list-style-type: none"> • If there is an outstanding balance owed to the landlord and it is likely to stand in the way of an expungement: <ul style="list-style-type: none"> ○ 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
Which <i>Type of Expungement</i> applies to your client's case?
Mandatory Expungement: Court must expunge IF
<ul style="list-style-type: none"> • Tenant lived in property subject to contract for deed or foreclosure AND <ul style="list-style-type: none"> ○ 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
Statutory Expungement
<ul style="list-style-type: none"> • Is the tenant's case sufficiently without basis in fact or law (<i>see below</i>)? • Is the expungement in the interests of justice? <ul style="list-style-type: none"> ○ Unjust to maintain records of eviction if lacks sufficient basis in fact or law ○ In interest of justice if it will help client find new place to live, or improve credit history, etc. ○ Other arguments... • Are the interests of justice outweighed by the public's interest in knowing about the record? <ul style="list-style-type: none"> ○ Does the client still owe money to landlord? ○ Are the records outside the Court's record retention policy? ○ How will the expungement help the client in ways that are stronger than public interest? ○ Other arguments...
Expungement under Court's Inherent Authority
<ul style="list-style-type: none"> • Always ask for this basis for expungement along with any of the above that also apply • 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? • Factors to consider: <ul style="list-style-type: none"> ○ 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 tenant's last eviction? ○ Was it a materially breach of lease other than non-payment of rent? ○ Number of evictions with the same landlord vs different landlords? ○ What are the terms of the lease?

Sufficient Basis in Fact or Law to consider for expungements (most common)
<i>Was service proper?</i>
<ul style="list-style-type: none"> • Served at least 7 days prior to court hearing (includes weekends)? • Not served by Plaintiff or other interested party (like property manager)? • Not served on a legal holiday? • Personal Service • Substitute Service <ul style="list-style-type: none"> ○ Person served must be of suitable age and discretion ○ Person served must reside with the Defendant • Mail and post <ul style="list-style-type: none"> ○ Must have tried to personally serve twice on 2 different days. One attempt needs to be between the hours of 6-10pm. ○ Summons must be mailed to Tenant ○ Affidavit of Mailing and Affidavit of non-found/Plaintiff must be filed with the court prior to posting.
<i>Proper Plaintiff?</i>
<ul style="list-style-type: none"> • Is Plaintiff entitled to possession of building or an authorized agent? Look at City and County property records to determine who owns the building. If person other than owner is listed, it is a properly authorized agent? • Did Plaintiff disclose principal names and addresses? • If suing in a business name, did Plaintiff properly register business with Secretary of State? • If Plaintiff is landlord of residential building with 12 or more units, was a written lease provided?
<i>Habitability Issues?</i>
<ul style="list-style-type: none"> • Were there repair problems? • <i>Fritz Defense</i>: tenant may use breach of covenant of habitability by landlord as a defense in a non-payment case • Was landlord in compliance with applicable health and safety laws?
<i>Breach of Lease</i>
<ul style="list-style-type: none"> • If eviction was for breach of lease, did P attach a copy of lease to the Complaint? • Was the breach material? (Was the breach so substantial and fundamental that it defeats the object of the parties in entering into the contract?) • Does D dispute grounds for case? • Is it an oral lease that only provides for the payment of rent? • Did P waive lease provisions by accepting rent with knowledge of the breach? Did P waive lease provisions by failing to enforce them?
<i>Other Defenses</i>
<ul style="list-style-type: none"> • Defendant moved out prior to eviction proceedings
<ul style="list-style-type: none"> • Landlord did not have a rental license. Check all City of Minneapolis addresses in online search: http://apps.ci.minneapolis.mn.us/AddressPortalApp/
<ul style="list-style-type: none"> • Defendant paid past due rent, but eviction still filed
<ul style="list-style-type: none"> • Retaliation Defense: tenant complained about repairs and landlord filed eviction action within 90 days. See Minn. Stat. §504B.411
<ul style="list-style-type: none"> • For a complete list of eviction defenses, see Eviction Answer Forms here: http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsInMinnesota.html

Expungement Motion to be filed IN the existing eviction case
Paperwork needed for Expungement Case
1. Signed Representation Agreement with client
2. IFP (one for each case)
3. Certificate of Representation (one for each case)
4. Expungement Motion (one for each case)
5. Service cover letter
6. Affidavit of Service (one for each case)
File with Court
1. Expungement Motion (initial filing)
2. Certificate of Representation (initial filing)
3. IFP (initial filing)
4. Affidavit of Service (later)
Service By Mail
1. Wait to serve documents until Court has issued hearing date
2. Documents to serve under service cover letter <ul style="list-style-type: none"> a. Order for Administrative Review or other scheduling order from court b. Expungement Motion and any attachments
3. Serve by Mail <ul style="list-style-type: none"> a. Plaintiff listed in case b. Plaintiff's Attorney if listed in Register of Action
4. File Affidavit of Service with Court
After court decision
<ul style="list-style-type: none"> • If Expunged <ul style="list-style-type: none"> ○ 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)
<ul style="list-style-type: none"> • If not expunged <ul style="list-style-type: none"> ○ Discuss with client why not expunged and what client needs to do to help get it expunged in the future ○ Explain that once client does more to help with Court's reasons for denial, contact VLN about filing again
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • 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.