

STATE OF MINNESOTA

COUNTY OF \_\_\_\_\_

DISTRICT COURT  
\_\_\_\_\_ JUDICIAL DISTRICT  
DIVISION:  
CASE TYPE: UNLAWFUL DETAINER  
(EVICTION)

\_\_\_\_\_  
\_\_\_\_\_

,  
Plaintiff (Landlord),

v.

\_\_\_\_\_

\_\_\_\_\_

,  
Defendant(s) (Tenant).

**NOTICE OF MOTION AND  
MOTION TO VACATE  
DEFAULT JUDGMENT  
AND/OR FOR OTHER  
RELIEF UNDER MINN. R. CIV. P. 60.02**

Pov. Law Form No. V-1 (March 2017)

**Case No.**

**NOTICE OF MOTION**

TO: \_\_\_\_\_

PLEASE TAKE NOTICE that at \_\_\_\_\_ a.m./p.m. on \_\_\_\_\_  
the Defendant(s) will bring the following motion on for hearing before the Honorable \_\_\_\_\_  
Referee or Judge of District Court, at the following location: \_\_\_\_\_

**MOTION**

\_\_\_\_\_

Defendant(s), being duly sworn, move(s) the Court as follows:

1. Since \_\_\_\_\_, Defendant(s) has/have been:

- a.  A residential tenant at the address of \_\_\_\_\_  
 ("the premises") under  written  oral rental agreement with \_\_\_\_\_  
 , providing for rental of \$\_\_\_\_\_ per month; or
- b.  A mortgagor, contract for deed vendee, or other authorized  
 occupant at the address of \_\_\_\_\_ ("the  
 premises"), with the following relationship to Plaintiff and the prem-  
 ises:

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2. Plaintiff is the \_\_\_\_\_

of the premises. Plaintiff's address is \_\_\_\_\_

3. Plaintiff filed this eviction action alleging the following:

- a.  Defendant(s) failed to pay rent due and owing for the prem-  
 es. Minn. Stat. § 504B.291.
- b.  Defendant(s) committed a material violation of the conditions  
 or covenants in the lease. Minn. Stat. § 504B.285, subd. 5.
- c.  Defendant(s) is/are holding over after termination of the time  
 for which the premises was leased or after termination of the  
 tenancy by proper notice to vacate. Minn. Stat. § 504B.285,  
 subd. 1(2), (3).
- d.  Defendant(s) is/are holding over after expiration of the time  
 for redemption on foreclosure of a mortgage for the premises  
 or after proper termination/cancellation of a contract to con-  
 vey the premises. Minn. Stat. § 504B.285, subd. 1(1).
- e.  Defendant(s) unlawfully detains possession of the premises.  
 Minn. Stat. § 504B.301.
- f.  Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

4. After Plaintiff filed this eviction action, Defendant(s) did the following:
- a.  Defendant(s) failed to appear.
  - b.  Defendant(s) appeared and denied Plaintiff's allegations in an oral or written Answer, or otherwise.
  - c.  Defendant(s) appeared and settled the dispute with Plaintiff. The parties reached the following Settlement Agreement:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
  - d.  Defendant(s) appeared and admitted Plaintiff's allegations, or the Court found in Plaintiff's favor after a hearing/trial.
  - e.  Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. On \_\_\_\_\_

a hearing/trial was held before the Honorable \_\_\_\_\_

At the hearing or trial, by order dated \_\_\_\_\_, the court did the following:

- a.  Found that Defendant(s) was in default for failing to appear.
- b.  Allowed Defendant(s) to redeem the tenancy by paying rent in arrears and/or costs of the action in the amount of \$ \_\_\_\_\_.
- c.  Ordered Defendant(s) to vacate the premises immediately.
- d.  Ordered Defendant(s) to vacate the premises by \_\_\_\_\_.
- e.  Scheduled another hearing/trial for \_\_\_\_\_.
- f.  Ordered Defendant(s) to pay rent or other moneys into Court in the amount of \$ \_\_\_\_\_ in cash or certified funds payable to the Court Administrator, on or before \_\_\_\_\_ a.m./p.m., on \_\_\_\_\_.
- g.  Approved the parties' Settlement Agreement.

h.  Other: \_\_\_\_\_  
\_\_\_\_\_.

6. The Court authorized the issuance of a Writ of Recovery of the premises on the following time line or under the following conditions, set out in an Order dated \_\_\_\_\_:

- a.  Immediately, following default by Defendant(s).
- b.  On \_\_\_\_\_, a date and time determined following default or appearance by Defendant(s) and a record made before the Court.
- c.  Upon failure by Defendant(s) to redeem the tenancy by payment of the amount of \$ \_\_\_\_\_ on or before \_\_\_\_\_.
- d.  Upon failure by Defendant(s) to pay rent or other moneys into Court, as described in Paragraph 5.f above.
- e.  Upon failure by Defendant(s) to make payments required by a Court-approved Settlement Agreement.
- f.  Upon failure by Defendant(s) to vacate by \_\_\_\_\_, as agreed by the parties in a Court-approved Settlement Agreement.
- g.  Other: \_\_\_\_\_  
\_\_\_\_\_.

7.  Defendant(s) failed to deposit with the Court rent or other moneys by the Court's deadline, as described in Paragraph 5.f above. Defendant(s) presently  has or  can obtain does not have the funds the Court ordered Defendant(s) to deposit with the Court.

8.  Defendant(s) took the following action to comply with the Court's Order and/or the parties Settlement Agreement: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

9. On \_\_\_\_\_,  
the Clerk of Court issued the Writ of Recovery and entered judgement for Plaintiff based on  
the following:

- a.  The Court's Order and/or the parties' Settlement Agreement, dated \_\_\_\_\_, described in Paragraph 6.\_\_\_\_ above;
- b.  Plaintiff's Affidavit of Default, which states the following as a basis for the issuance of an immediate Writ of Recovery: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ and/or
- c.  Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

10. Defendant(s) was/were informed of the issuance of the Writ on \_\_\_\_\_  
when \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Grounds for Relief**

11. Defendant(s) has/have grounds for relief from judgment under Minn. R. Civ.  
P. 60.02 as described below.

12.  The judgment is void and must be vacated. The Court lacks personal  
jurisdiction over Defendant(s) because Plaintiff did not strictly comply with the statutory  
requirements for serving Defendant(s) with the Summons and Complaint in this eviction  
action, in that \_\_\_\_\_  
\_\_\_\_\_.

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13. Defendant(s) is/are entitled to relief under the standard of *Finden v. Klaas*, 268 Minn. 268, 128 N.W.2d 748 (1964).

a. Defendant(s) has/have a reasonable defense(s) on the merits, or has complied with the Court's Order and/or the parties' Settlement Agreement, in that

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b. Defendant(s) has/have a reasonable excuse(s) for not appearing before the Court, or for not complying with the Court's Order and/or the parties' Settlement Agreement, in that \_\_\_\_\_

c. Defendant(s) exercised due diligence after notice of entry of judgment, in that \_\_\_\_\_

d. Plaintiff will not be substantially prejudiced (unfairly affected or disadvantaged) by the granting of this Motion because \_\_\_\_\_

14. Defendant(s) has/have taken the following action to notify Plaintiff of Defendant's intent to bring this motion: \_\_\_\_\_

**Defendant Requests an Order as Follows:**

1. Determining that Defendant(s) is/are entitled to relief from the judgment on the following grounds:

- a.  Mistake, inadvertence, surprise, or excusable neglect. Minn. R. Civ. P. 60.02(a).
- b.  Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial. MINN. R. CIV. P. 60.02(b).
- c.  Fraud, misrepresentation or other misconduct by Plaintiff or Plaintiff's agents. Minn. R. Civ. P. 60.02(c).

- d.  The judgment is void. Minn. R. Civ. P. 60.02(d).
- e.  The judgment has been satisfied, released, or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. MINN. R. CIV. P. 60.02(e).
- f.  Relief is justified under the circumstances because \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_ . Minn. R. Civ. P. 60.02(6).

2. Granting Defendant(s) relief from the judgment as follows:

- a.  Vacating the judgment and the order granting judgment.
- b.  Re-opening the record in this matter for a hearing on the merits.
- c.  Other: \_\_\_\_\_  
 \_\_\_\_\_.

3. Directing the \_\_\_\_\_ County Sheriff's

Department not to take any action to enforce the Writ of Recovery, to cease from enforcing the Writ of Recovery if it already has begun to enforce the Writ of Recovery, and to take all measures necessary to immediately restore possession of the premises to Defendant(s).

4. Directing Plaintiff to immediately restore possession of the premises to Defendant, and to cease efforts to enforce the Writ of Recovery.

5. Scheduling a hearing on the issues raised in this Motion.

6.  Ordering no bond as a condition of hearing this Motion, since Defendant(s) alleges facts to support a claim that the judgment is void under MINN. R. CIV. P. 60.02(d). *See Village of Zambrota v. Johnson*, 280 Minn. 390, 161 N.W.2d 626 (1968); *Pugsley v. Magerfleisch*, 161 Minn. 246, 201 N.W. 323 (1924).

7. Other: \_\_\_\_\_

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8. Awarding Defendant(s) costs, disbursements, and/or reasonable attorney's fees pursuant to the following:

- a.  Minn. Stat. §§ 549.02, 549.04.
- b.  The parties' lease. Minn. Stat. § 504B.172.
- c.  Other: \_\_\_\_\_.

9. Granting Defendant(s) such other and further relief as may be just and equitable under the facts and circumstances outlined above.

10. Under Minn. R. Civ. P. 11, I certify that, to the best of my knowledge:

- a. this document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- b. the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- c. the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
- d. the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and
- e. this document does not include any restricted identifiers and that all restricted identifiers have been submitted in a confidential manner as required by Minn. R. Gen. Prac. 11.

I know that I may be fined or sanctioned by the court if this certification is false.

11. Under Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.

Date	Signature
County and State Where Document Is Signed	Name: _____
County: _____	Address: _____
State: _____	City, State, Zip: _____
	Telephone: _____