

# HOUSING PHONE ADVICE HANDBOOK

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# Phone Advice Handbook

The purpose of this Handbook is to provide information for phone advice volunteers to make merit determinations on cases presented during phone advice sessions, to provide information to clients on how their case is likely to proceed procedurally, and to help volunteers provide information to VLN.

## Purpose of Phone Advice

### Client Qualifies for Full Representation

If the client qualifies for full representation by VLN, the case is to be screened for full representation. You are screening for whether the case is meritorious. If you determine that the case has merit, please inform the client that their case is being referred for possible placement with a volunteer attorney. However, it is important to inform the client that this is *not* a guarantee that we will be able to place their case with a volunteer and that placement with a volunteer attorney can take some time, a matter of weeks. If the client has an emergency situation (for example, the client missed their hearing), and you are referring for full representation someone will get back to them sooner. If you determine that the case is not meritorious, or is otherwise unlikely to succeed, please do not refer it for full representation. Please inform the client what the problems are with their case and why you do not believe it will be successful. VLN has limited resources and we cannot take on cases that are not meritorious.

If you do not believe the case is meritorious (for example, you do not believe we will be able to get the client's case expunged), but the client still wants to pursue it, please provide them with general information as to how a case like theirs proceeds and any necessary forms. Do not refer it back to VLN for full representation.

### Client Does Not Qualify for Full Representation

If the client does not qualify for full representation, please assess for merit, and if meritorious, provide the client with information and forms to pursue the case on their own. If you determine the case is not meritorious, or is otherwise unlikely to succeed, please inform the client of the reasons.

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## Eviction

### Tenant Has Not Had Their First Appearance Yet

Advise tenant to go to their hearing and request to speak to an attorney there.

### Tenant Missed Their Hearing

Determine whether a Rule 60.02 motion is appropriate. In order to be successful in a Rule 60.02 motion, the tenant must be able to prove.

- A. Tenant has a reasonable defense on the merits,
- B. Tenant had a reasonable excuse for not appearing,
- C. Tenant acted with due diligence upon learning they had missed the hearing, and
- D. Defendant will not be substantially prejudiced by the granting of the motion.

### Reasonable Defense on the Merits

If it is a non-payment case and the tenant owes the money, it is unlikely the tenant has a reasonable defense on the merits. If there are *serious* repair issues that the tenant informed the landlord of before the date of the first appearance, the tenant may have a reasonable defense on the merits.

If it is a breach case and the defense is “I didn’t do it,” it must be a believable defense for referral back to VLN for full representation.

If it is a holdover case and the notice was proper or given by the tenant, the only available defenses are discrimination and retaliation. These defenses should not be suggested to the tenant but can be used if brought up by the tenant.

## Reasonable Excuse for Not Appearing

What the Court will accept for a reasonable excuse really varies. Sometimes Courts will accept that the tenant got the dates mixed up but I have also had detention by police rejected as a reasonable excuse for not appearing. If the tenant has any reasonable excuse, and meets the other criteria, the case should be referred for possible full representation.

## Due Diligence Upon Learning Hearing Was Missed

The tenant should have acted immediately upon learning they missed the hearing. A delay until the 24-hour notice is posted on the door is too long unless there are extenuating circumstances.

## Defendant Will Not Be Substantially Prejudiced

It is not clear what a Court will consider “substantially prejudiced.” It is within the discretion of the Court. However, if the writ has not issued yet, that is good evidence that the defendant is not substantially prejudiced. If the writ has issued and the 24-hour notice has been posted on the tenant’s door and the tenant does not have the wherewithal to enter into an aggressive payment plan that is likely going to be substantial prejudice to the defendant. Use your best judgment in referring the tenant for further services.

# Eviction Expungement

## Searching MCRO

Please search MCRO to determine:

- A. Does the tenant have any additional evictions?
- B. Is there a money judgment for costs?
- C. How old is/are the eviction(s)?
- D. What was the basis for the eviction(s)? (non-payment, breach, holdover, or something else)
- E. Were there obvious legal defects in the eviction case itself?

For each eviction ask the tenant:

- A. What was happening at the time of the eviction?
- B. Does the tenant still owe the landlord money?
- C. How is the eviction affecting the tenant’s life today?
- D. Is the tenant’s life different today?
- E. Would the landlord stipulate to an expungement?

## Additional Evictions

If the tenant has additional eviction besides the one they called about, please let them know and evaluate each eviction for expungability.

## Money Judgment

If the eviction has a money judgment, let the tenant know that the money judgment must be paid before the Court will consider expungement. Payment must be made to the law firm that filed the request for the money judgment. An additional fee will apply (in addition to the amount of the judgment) for the Satisfaction of Judgment filing which is needed to prove to the Court that the judgment has been paid. If you determine that the tenant meets all other criteria, inform the tenant that they can call VLN back once they have paid the money judgment,

## Eviction Less Than One Year Old

If the eviction is less than a year old, let the tenant know that the eviction is very unlikely to be expunged and we are unable to help at this time. If you receive push-back, inform the tenant that they are able to file a motion themselves using Minnesota Court forms for expungement of an eviction and an application for a fee waiver (if applicable). (Search for “Minnesota court forms expungement eviction” and “Minnesota court forms fee waiver.”)

## Basis for the Eviction

Non-payment cases are more easily expunged than breach (especially if the behavior was criminal or shocking) or holdover cases.

## Were There Obvious Legal Defects to the Eviction Case?

Did the tenant get the appropriate pre-eviction notice? Was service proper? (Generally, service is proper where the landlord made two attempts at personal service at the last known address, mailed, and posted at least 7 days before the hearing.) Were all the necessary documents attached to the complaint? Had the tenant already moved out at the time of the eviction and removed all personal property and turned in the keys or left the keys with any remaining tenant?

## Questions to Ask Tenant

### What Was Happening at the Time of Eviction?

Was the precipitating incident beyond the control of the tenant (for example: a lay-off, an injury, an illness, loss of child care, a mental health crisis, etc.) or was it a matter of poor choices? An expungement is more likely where the precipitating incident was beyond the control of the tenant.

### Does the Tenant Still Owe the Landlord Money?

Owing the landlord money is not a complete barrier to obtaining an expungement in Hennepin County. However, it is likely a barrier to obtaining an expungement in Ramsey and Anoka Counties. Entering into and starting a payment plan will assist in lowering this barrier.

## How is the Eviction Affecting the Tenant's Life Today?

Has the tenant been denied housing due to the eviction record? How many times and by whom? Is the tenant living in a shelter? Is the tenant doubled-up or couch surfing? Is the tenant preparing to move? (An expungement can take 2-3 months after placement with an attorney.) Has the tenant had children separated from the family? Is the tenant paying more for substandard housing?

## Is The Tenant's Life Different Today?

Essentially, what makes them a good/low risk as a tenant now as opposed to the time when they were evicted? Has the crisis beyond the tenant's control resolved? Has the tenant gotten sober? Has the tenant gotten a Section 8 voucher or other ongoing rent assistance? Has the tenant obtained ongoing mental health support?

## Would the Landlord Stipulate to an Expungement?

If the tenant thinks the landlord might agree to an expungement, that is a much faster, less cumbersome process and is worth looking into. Ideally, the tenant will contact the landlord directly and see if the landlord would be willing to agree and VLN can provide a form for both tenant and landlord to sign (the form is on our website).

# Repairs

## Rent Escrow vs. Emergency Tenant Remedies Action

Emergency Tenant Remedies Actions are limited to the following issues:

- A. A serious infestation;
- B. The loss of running water;
- C. The loss of hot water;
- D. The loss of heat;
- E. The loss of electricity;
- F. The loss of sanitary facilities;
- G. A nonfunctioning refrigerator;
- H. If included in the lease, a nonfunctioning air conditioner;
- I. If included in the lease, no functioning elevator;
  
- J. Any conditions, services, or facilities that pose a serious and negative impact on health or safety;
- K. Other essential services or facilities; or
- L. Violation of privacy rights.

An Emergency Tenants Remedies Action is a faster process. The tenant must give the landlord 24-hours' notice of the issue and the intent to seek emergency relief. The tenant will generally get a hearing within a week and may get an order to correct before that. (VLN may not be able to provide a lawyer within a week.) The landlord cannot countersue for possession (but may bring a separate action).

## Rent Escrow Action

### “Reasonable Repair”

Tenants are entitled to a unit in “reasonable repair.” Tenants are not entitled to a perfect unit. Cosmetic issues or issues of general wear and tear will not likely be successful in a rent escrow action. These cases should not be referred for full representation. Reasonable repair includes that the unit be free from vermin.

### Subsidized Housing

We do not assist tenants living in subsidized housing to bring rent escrow actions. These cases should generally have been screened out at intake but sometimes clients don't mention that they have a subsidy. If no rent escrow action has been filed, these cases should not be referred for full representation. Section 8 tenants should ask their Section 8 worker for an inspection. If a rent escrow action has already been filed, the client should attend their first appearance and request to speak to an attorney there.

### Tenant Must Remain in Possession

Tenants must remain in possession of the unit throughout the case. If at any time the tenant vacates the unit, the case will be dismissed. Tenants who are planning on vacating should not be referred back for full representation

### Notice to Landlord

Tenant must give 14 days' notice to the landlord of the problems with their unit, unless they have had a city inspector issue a notice to correct, the landlord has not corrected, and the time given to correct has passed. A 14-day notice form is on VLN's website. The notice or city inspector's report must be attached to the rent escrow affidavit filed with the Court. It is a common mistake for tenants filing their own rent escrow action to fail to attach their proof of notice to the landlord to the rent escrow affidavit. To be considered by the Court, the issue must be named in both the notice to the landlord and in the rent escrow affidavit.

### Naming the Defendant

Tenants often mis-name the defendant by naming the property manager as the landlord. A name and address of the landlord may be in the lease. Some leases hide the name of the actual landlord and only give the name of the property management company. The actual landlord can

be determined by looking at property tax records. Links to property tax records can be found on VLN's website under Eviction Defense and then Property Information. An address for service on the landlord can be found on the Secretary of State's website. A link to the Secretary of State's website is also available on VLN's website under General Links.

Tenants usually know the name and address of the property management company which should also be included in the rent escrow affidavit.

## Cost Estimate

Tenants should make their best guess as to the cost of repair with the understanding that if the cost estimate is over \$20,000 they are responsible for service of the rent escrow affidavit and summons on the landlord. If the cost estimate is less than \$20,000, the Court will be responsible for service.

## Depositing Rent with the Court

Once the tenant files a rent escrow affidavit the tenant should deposit their rent with the Court. Payment to the Court may be made by certified check or money order made out to the "[County] District Court Administrator" or cash. Rent Deposits should be made by the date rent is due – generally the first of the month. Deposits should continue to be made each month until the case resolves.

The Court can no longer require the tenant to post back rent. However, if back rent is owed, the landlord can sue for possession based on non-payment. This will not be considered retaliation unless it is a very unusual case. It is probably not a good idea for a tenant to file a rent escrow action where back rent is owed or the tenant is in breach of the lease (for example: has an unauthorized pet or person living with them). At a minimum, the tenant must be informed of the possible consequences of filing a rent escrow action.

## Remedies

There are check-boxes on the rent escrow affidavit form asking what remedies the tenant is asking for. Generally, the tenant should check all the boxes with the possible exception of "(b)" which asks that the tenant be allowed to make the repairs and deduct the costs from the rent. A tenant may not want to do this. If the tenant wants to end the lease, the tenant should check the "other" box and enter "termination of the lease" on the lines provided.

## Retaliation

Legally, a landlord may not legally retaliate against a tenant for filing a rent escrow action. If the alleged retaliatory action is within 90 days of the filing of the rent escrow action, the landlord will be responsible to prove that their action is not retaliatory. If the landlord's alleged retaliatory action is beyond 90 days from the filing of the rent escrow action, the tenant will have to prove that the landlord's action was in retaliation for the filing of the rent escrow action.

However, we cannot assure a tenant that the landlord will not retaliate. Landlords sometimes do retaliate. The retaliation may be subtle and below the threshold for a legal action or it may be overt and difficult to deal with. Counterclaiming for possession based on non-payment of back rent or breach will not likely be considered retaliation. Retaliation can look like nit-picking, being hostile, non-renewal of a lease, or other actions.

## Privacy Violations

Landlords must give 24 hours' notice to enter a unit unless the tenant agrees otherwise or it is an emergency. The landlord must have a reasonable business purpose to enter the unit, for example: to compete repairs, to show the apartment to prospective tenants at the end of the tenancy, or inspection. There are other requirements as well. The tenant is not entitled to require their "permission" for the landlord to enter. If the landlord gives appropriate notice, they are entitled to come in. Also, the tenant cannot require that they are present when the landlord enters.

Where the landlord has entered, or is entering, the unit without the appropriate notice in a non-emergency situation, the landlord can be fined up to \$500 per incident. The tenant must be able to provide specific dates on which the landlord entered without notice.

A privacy violation case can be brought as an emergency tenant remedies action or a rent escrow action. Appropriate notice must be given under the provision used (24 hours for an ETRA and 14 days for a rent escrow action).

# Landlords

## Landlord Clients

VLN only serves landlords who live in the same property as their tenants (up to a duplex) and who do not own more than one property. The landlord must also meet VLN's financial requirements. Often these clients are elderly or vulnerable adults who let someone move into their home or it is a family situation.

## Written Lease

Ask whether there is a written lease. Often there is not but if there is, we need to see it. If there is a written lease, ask what the term are.

## Payment of Rent and Notice to Vacate

Often in family situations, there never was an agreement for payment of rent. Clients are shocked to learn that, where there is no provision for rent, they must give a three-month notice to vacate. It is not clear in the law whether this is 90 days from the date of the notice or three calendar months. Therefore, the safer route is to give three calendar months' notice. This is a very long time where the situation is already tense but it is what the law requires.

The three-month notice can be very simple, stating that the landlord is terminating the tenancy as of [date] and the tenant is required to vacate as of that date. The notice should state the date the notice is given and how given (hand-delivery, mail, etc.)

Where the tenant agreed to pay rent, ascertain when rent was due (on the first of the month or some other day) and whether the tenant ever paid rent. If the situation is that the client alleges that rent is due but there is no written lease and the tenant never actually paid rent, the tenant may make the argument that rent was never required and they are entitled to a three-month notice.

Where rent is required, the tenant is entitled to a notice as long as the interval between rent payments, typically one month. However, that is one full calendar month. So, notice given on October 15 cannot be effective until November 30 with November being the full calendar month. To give the least amount of notice, give the notice at the end of the month preceding the calendar month of notice. For example, give notice on September 30 for an October 31 vacate date.

It is sometimes possible to get the tenant to agree to pay rent and then evict them based on the failure to pay rent with a 14 or 30-day notice rather than waiting the three months (see below). However, the tenant must *agree* to the rent imposition. This agreement should be in writing as the tenant is otherwise likely to deny there was an agreement to pay rent.

## Eviction for Failure to Pay Rent

### Pre-Eviction Notice

Before a landlord may commence an eviction for failure to pay rent, they must give the tenant a 14-day notice, except in Minneapolis and Brooklyn Center where a 30-day notice is required. Also, St. Paul will have a 30-day notice requirement as of May 2026. There are very specific statutory requirements for this notice which must be met or the eviction will be dismissed and the client will have to start over. There is a form on VLN's website that includes all the required language.

The notice must be hand-delivered or mailed. Posting it on the tenant's door is not sufficient.

### Filing the Complaint

On the day after the time period for the notice (for example, the 15<sup>th</sup> day after giving a 14-day notice), the client may file the eviction action. If the case is going to be referred for full representation, a VLN volunteer or staff attorney will complete the eviction complaint.

If the client does not qualify for full representation, please provide them with links to the Court's eviction complaint packet available on the Court's website. (Search "Minnesota court forms eviction.") There is an electronic fill-in form and also a program called "Minnesota Guide and File." This program asks questions and then electronically fills in the form for the client. However, the program will not work where no rent was required. In that case, the client should

just use the fill-in form – be sure to remind the client to “Prepare for Efile” (at the top of the form) when they have completed the form and before e-filing or emailing (Anoka only).

The client must attach to the complaint: the lease, a ledger (if they don’t have one they can write one up), and the 14-day or 30-day notice or the case will be dismissed.

The client should also be provided with the Affidavit to Request a Fee Waiver packet available on the Court’s website (Search “Minnesota court forms fee waiver”).

In theory, the completed forms can be electronically filed by parties through the EFS system but the system is very complicated for lay people and the client is probably better off printing the completed forms and taking them to the Courthouse for filing. Anoka does allow lay people to email their pleadings for filing. We do not have the email address because the Anoka Court does not allow lawyers to email their filings but the client may call the clerk to get the information. The number for the Anoka clerk is 763-760-6700 (press 4, then 3).

## Obtaining the Summons

After filing, a summons will be issued by the Court. This takes a few to 10 days. The summons will provide the date and time of the first appearance. If the client files the papers in person, or by email in Anoka, they should ask the clerk how they will get the summons. If the client e-files with the EFS system, they should be sure to sign up for e-service and notice of the issuing of the summons will be emailed to them.

## Service

After the summons is issued, the Complaint and Summons must be served on the tenant. This must be done by someone other than the client. We recommend that the client pay for the services of a process server and further recommend Metro Legal as the process server. This will cost about \$100-120. The process server will not only serve the tenant but will assist with the affidavits of service required to be filed with the Court. Also, Metro Legal knows all of the service requirements, which there are many. If the case is being referred for full representation, we will be using Metro Legal for service and the client will be responsible for the cost of service.

## First Appearance

The client then attends the first appearance hearing as noticed on the summons. In Hennepin County, this will be in person at the Hennepin County Government Center, C Tower, third floor. In Ramsey and Anoka Counties, all proceedings will be virtual, by Zoom.

At the first appearance, the parties are expected to try and negotiate a settlement. In most cases, a tenant can get 7 days from the day of the hearing to pay the rent due or vacate from the judicial officer. A settlement typically includes an agreement to pay the rent in installments or a vacate date. If a settlement is reached, it is important to have, as part of the settlement, that if the settlement terms are violated, the landlord can file an Affidavit of Non-Compliance and obtain a writ upon the payment of the fee with no additional notice to the defendant or further hearing.

## Settlement Agreement Not Complied With

If the client enters into a settlement and the settlement agreement is not complied with by the tenant, the client is entitled to file an Affidavit of Non-Compliance and Request for Writ of Recovery. The Affidavit of Non-Compliance and Request for Writ of Recovery is a simple document with a caption that states (1) what was required by the settlement agreement (2) how the tenant violated the settlement agreement, and (3) that the client is requesting an immediate writ of recovery. Once the Court orders that the writ be issued, the client should go to the Court Housing Clerk and obtain the writ.

The writ issued by the Court must be taken to the County Sheriff. The Sheriff's office can assist with getting the writ to the appropriate department. The Sheriff will then go and post on the door that the tenant has 24 hours to vacate. If the tenant does not vacate, the landlord must call the Sheriff back and inform the Sheriff that the tenant did not vacate. The Sheriff will then come back, when they can get it on their schedule, and remove the tenant. The landlord is required to let the tenant know when the Sheriff will be coming to remove them. The client should be clear with the Sheriff that they are only to remove the tenant and not the landlord where the tenant is not in a separate unit.

## Maintenance of Tenant's Property

After removal of the tenant, the client must maintain the tenant's property for 28 days. The client must be "reasonable" in allowing the tenant to retrieve their property. A reasonable storage fee can be charged for holding the tenant's property. After 28 days, the tenant's property can be disposed of.

## Eviction for Breach of Lease

If there is no written lease, breach can only be for breaches of the covenant not to allow illegal activities. These illegal activities include controlled substance crimes, prostitution, unlawful use or possession of a firearm, and possession of stolen property.

If there is a written lease, the behavior alleged to breach the lease must be specifically prohibited by the lease, there must be a clause in the lease permitting "re-enty" which is the right to evict for breach of the lease, and the breach must be "material." A breach is material if it goes to the heart of the contract between the parties.

There is no notice requirement before filing an eviction complaint for breach of lease except in Brooklyn Center where the notice requirement is 30 days.

The eviction complaint must specify the clause of the lease breached, the behavior alleged to constitute the breach, the date of the behavior, and the clause of the lease which permits eviction for breach of the lease. The lease must be attached to the complaint or the case will be dismissed – unless there is no lease and the breach is of the covenant not to allow illegal activities.

Issuance of the summons and service of the complaint and summons are as stated for eviction for non-payment.

The court procedures for the breach cases are the same as those stated for eviction for non-payment.

## Eviction for Holdover

Eviction can be had for “holdover” where the tenant has been given a proper notice to vacate and failed to vacate or the tenant gave notice to vacate and did not do so by the date provided. A proper notice to vacate gives the proper length of notice as discussed above under “Payment of Rent and Notice to Vacate.”.

The notice to vacate must be attached to the eviction complaint or the case will be dismissed.

Issuance of the summons and service of the complaint and summons are as stated for eviction for non-payment cases.

The court procedures for holdover cases are the same as those stated for non-payment cases.