

# Evictions Basics

AUGUST 31, 2020

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Mission: Protect and Promote the Rights of Low-Income Minnesotans through the Power of Volunteers

## Housing Projects:

\*Housing court clinics in Hennepin, Ramsey and Anoka Counties

\*Eviction expungement clinics

\*Eviction representation and repair litigation

**\*BECAUSE OF COVID, we are using phone advice appointments to advise tenants or determine representation**

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## Agenda

- ✓ How the Eviction Process works in the Court System
- ✓ The Eviction Moratorium
- ✓ Expungements
- ✓ Questions

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## How the Eviction Process Works in the Court System

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## What is an eviction

- Eviction cases used to be called “unlawful detainers” (UDs).
- A landlord brings an eviction action against a tenant when it wishes to remove the tenant from the premises (apartment, house, or other dwelling).
- An eviction case is to **remove** the tenant from a premises.

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## Legitimate Reasons a Landlord brings an Eviction (without the moratorium)

- Nonpayment of rent (most common)—90% of cases are about rent
- Other breach of the lease
- Refusal to leave after notice to vacate has been served and the last day of the tenancy has passed

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### What happens in Court with an eviction case?

- At the first appearance, the Court encourages an attempt to negotiate a settlement.
  - ✓ It helps the Tenant to know the **strength or weakness** of the eviction case before negotiating settlement
  - ✓ Legal Advice
  - ✓ Mediation Services
  - ✓ Financial Services
- If no settlement, the Court asks the landlord and tenant to give their respective sides of the story.

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### More on Court Cases

- The following are the possible outcomes of the first appearance:
  - ✓ The judicial officer delivers a decision to dismiss case for legal reason;
  - ✓ The parties reach a settlement agreement, which is approved by the Court; or
  - ✓ The case is set for trial on a particular day at a specific time.
- A trial is generally only before a judge (no jury) and the judge makes a decision after all of the evidence is provided.

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### Results of an Eviction Case in Court

- **Tenant wins the case!** Landlord can take no action against the tenant.
- Tenant and Landlord reach a **settlement**, which is submitted to and enforced by the Court.
- Landlord obtains order authorizing a **writ of recovery**:
  - ✓ The judicial officer delivers a decision at the initial appearance;
  - ✓ Tenant breaches the court-approved settlement; or
  - ✓ The trial is held and results in judgment in favor of landlord.

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## Evictions: Important Things to Note

- Court approved settlements **MUST** be followed to the letter
  - ✓ Don't agree to something (date to pay rent, date to move out) if the tenant cannot meet it
  - ✓ Ask for case to be expunged by the Court if the conditions are met
- Only a law enforcement officer can physically evict a tenant from a premises, and this can only be done if a **writ of recovery** has been issued by the Court.

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## More Important Things to Note

- A landlord may not evict a tenant or end a tenancy in **retaliation** for the tenant's "good faith" attempt to enforce the tenant's rights
- A landlord also may not respond to a "good faith" attempt by adversely changing the rental terms (i.e., raising a tenant's rent, cutting services, etc.).

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## Habitability

- In Minnesota, the landlord is responsible for making sure the rental unit is:
  - ✓ Fit to live in
  - ✓ Kept in reasonable repair
  - ✓ Kept in compliance with state and local health laws
  - ✓ Made reasonably energy efficient to the extent that energy savings will exceed the costs of upgrading efficiency.

**The landlord may not waive these obligations.**

Minn. Stat. §504B.161

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## More on Habitability

- What if landlords will not make repairs?
  - ✓ Write a letter to landlord. List repair needs. Keep a copy
  - ✓ Request an inspection from the City.
  - ✓ Sue in court—called a Rent Escrow Action
  - ✓ Raise as a habitability defense in eviction case
  - ✓ Minnesota is not a “repair and deduct” state

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## Eviction Moratorium 2020

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## Eviction Moratorium

- Governor Walz declared a Peacetime Emergency through **September 11, 2020.**
- Governor Walz can extend the Peacetime Emergency every 30 days.
- Most evictions in Minnesota are on **PAUSE** during the emergency.
- Tenants should still pay rent due to a landlord during the emergency.

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## Eviction Moratorium Exceptions

- ✓ If tenant or someone in the home put anyone's safety in serious danger
  - ✦ In home, in the yard around home, or in common areas of a building.
  - ✦ NOT for things that happen away from home.
- ✓ If tenant does a lot of damage to the property.
- ✓ If the landlord or one of their family members plan to live in the home.
- ✓ If tenant unlawfully allows controlled substances, prostitution, firearms, or stolen property under Minn. Stat. §504B.171 subd. 1

Executive Order 20-79

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## Notice of Eviction

- A landlord must provide **written notice** to a tenant that they are going to file an eviction case against the tenant under current law including the eviction moratorium.
- Amount of notice:
  - ✓ In most cases, at least **7 days** before filing the eviction in most cases
  - ✓ In some cases, the notice must be **30 days** before filing the eviction.

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## Expungement of Eviction Cases

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## Impact of an Eviction

- The filing of an eviction action has serious consequences for a tenant.
  - ✓ Denial of rental applications
  - ✓ Pay larger security deposits
  - ✓ Inability to find affordable and safe housing.

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## Evictions on a Tenant's Record

- An eviction becomes part of the tenant's record at the time of filing, REGARDLESS of the outcome.
  - ✓ If the tenant wins the eviction case
  - ✓ If the case is dismissed by the landlord or the court
  - ✓ If the tenant pays what is owed to the landlord for rent and continues to reside at the premises

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## How Long Does an Eviction stay on a Tenant's Record?

- ✓ The record remains on the Minnesota Court Information System (MNCIS) **indefinitely**, without further action by the tenant.
- ✓ While Minnesota law does not limit how long an eviction can be reported – such as by a tenant screening company – federal law (the Fair Credit Reporting Act, 15 U.S.C. § 1681c) prohibits the reporting of an eviction **after 7 years**.
- ✓ Minneapolis has and St. Paul will have ordinances on how long to look back

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### What does “Expungement” Mean?

- Expungement means removing the record of a court case from the public view.
- Only Courts can expunge eviction cases.
- When an eviction case is expunged, a search of court files related to a tenant will not locate a record of the case.

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### When can a Court Expunge an Eviction Case?

- A Tenant requests an expungement of an eviction case
- Also, a may be part of a negotiated settlement with the Landlord
- The Court must grant some requests dealing with foreclosures and contract for deed evictions
- For most expungement requests on eviction cases, it is up the Court to decide whether to grant the motion to expunge.
- The Court asks whether there was a mistake of law or fact in the underlying case.

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### Court Considerations for Expungements

- The Court considers a balancing test:
  - ✓ Harm to individual must be greater than the disadvantage to society in not knowing about the rent history; and
  - ✓ Burden on court in eliminating the record. (Minn. Stat. §484)
- Factors:
  - ✓ Age of eviction
  - ✓ Money still owed?
  - ✓ Circumstances at time of eviction and at time of the request to expunge: what has changed?
- STILL even if all the things the law requires to be shown are shown, it is still up to the judicial officer to decide to expunge the case or not.

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### Examples that Help for Expungement

- Tenant won the case—it was dismissed, or the tenant won at trial.
- Tenant moved before the eviction action was served on the tenant.
- Tenant settled the case and the landlord agreed
  - ✓ The eviction had been filed because of a misunderstanding, or
  - ✓ The tenant had defenses.
- Landlord agreed not to oppose expungement.
  - ✓ A landlord cannot give a tenant an expungement, but the landlord's agreement not to oppose expungement can be helpful.

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### Examples Hinder Obtaining an Expungement

- New eviction (less than a year old)
- Money is still owed to the landlord
- Opposition to the motion by the landlord
- Writ was issued and executed by the Sheriff

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### MOTION GRANTED: What to do if a Tenant gets an Expungement

- If motion is granted, the court will expunge the public record of the eviction.
- A tenant must then notify tenant screening companies to delete references to the eviction from their records.
  - ✓ This requires sending a letter and a copy of the expungement to EACH company.
- Lots of new tenant screening agencies around, so might need to confirm with a company that a expungement is know if a tenant is turned down.

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## Resources

- Landlord and Tenants: Rights and Responsibilities, Office of the Minnesota Attorney General, [www.ag.state.mn.us](http://www.ag.state.mn.us)
- Legal Aid Fact Sheets by topic, [www.lawhelpmn.org](http://www.lawhelpmn.org)
- Southern Minnesota Regional Legal Services, [www.smrls.org](http://www.smrls.org) (income restrictions on legal services)
- Volunteer Lawyers Network, [www.vlnmn.org](http://www.vlnmn.org) (income restrictions on legal services)
- Homeline, [www.homelinemn.org](http://www.homelinemn.org) (no income restrictions)
- Minnesota Judicial Branch, <http://www.mncourts.gov>

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## QUESTIONS



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*Thank  
you!*

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