



MINNESOTA JUDICIAL TRAINING UPDATE



HOUSING COURT - EVICTIONS: 10 BASIC RULES EVERY JUDGE MUST KNOW

PROBLEM: Eviction Laws And Procedure Are Creations Of Statute And At Times Can Be Complex And Confusing. Although Hennepin And Ramsey County Have Judges/Referees That Specialize In This Area, For Much Of The State, Judges Preside Over Eviction Cases With Little Or No Prior Experience. The Following **10 Basic Rules** Apply To All *Landlord-Initiated Eviction Actions*, Not Tenant-Initiated Remedy Actions.

TYPICAL CLAIMS: Most Eviction Complaints Are Based On 1 of 2 Claims:

- 1) “*Nonpayment Of Rent*” under 504B.291, and/or;
- 2) “*Breach Of Lease*” under 504B.285.

ONE: CORPORATIONS MUST BE REPRESENTED BY ATTORNEYS:

An incorporated landlord must be represented by a licensed attorney when appearing in District Court for an eviction hearing. *Towers v. Schwan, No. A07-1311 (Mn. App. 2008)*.

- a) **Exception:** Hennepin and Ramsey County “Housing Courts” are governed by Minn. R. Gen. Pract. 603, which allow corporations to appear by their agents with a “Power of Authority”

TWO: SERVICE OF COMPLAINT – JURISDICTION: Service must occur 7 days BEFORE the initial hearing. If a party does not voluntarily submit to the jurisdiction of the court, the judge has NO authority to assume jurisdiction if the notice or service of process is less than 7 days. For example, if the initial hearing is set for Wed, July 20, then service must occur sometime on Wed, July 13th (Seven days BEFORE the hearing). *M.S. 504B.331*.

THREE: STAYING EXECUTION OF THE WRIT – SUBSTANTIAL HARDSHIP:

The court has discretion to extend the time the tenant must move out by up to 7 days. Upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family, the court shall stay the writ of recovery for a reasonable period, not to exceed seven days. Other than by agreement of both parties, there is no legal authority to stay a Writ past 7 days once it has been determined that a Writ should issue. *Minn. Stat. 504B.345*

Note – Substantial Hardship: While the most common ‘substantial hardship’ found by a judge is a residential tenant with child(ren) having to move hurriedly, this provision could also apply to a commercial Tenant (e.g. if the Tenant is a restaurant and has a lot of equipment to move.)

Note – Settlement Agreements: The parties may settle and agree to longer periods for the tenant to pay. Landlords often agree to payment plans that run longer than seven days with the tenant agreeing that a writ may issue if a payment is missed. Landlords often make these lawful settlements if they are more interested in collecting rent than evicting that particular tenant.

FOUR: TENANT’S RIGHT TO REDEEM POSSESSION OF PREMISES:

The tenant may, at any time before possession has been delivered (*means the end of the day judgment is stayed to, not physical transfer of possession*), **redeem the tenancy** and be restored to possession by paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest (*rare, but occasionally a lease will include an interest clause*), costs of the action (*typically the filing fee plus the fee to the process server*), and an attorney's fee not to exceed \$5 (*not a misprint, as the \$5 has not been changed for over a century*), and by performing any other covenants of the lease. *Minn. Stat. 504B.291 subd. 1 (a)*.

THERE ARE 5 BASIC RULES REGARDING THE RIGHT TO REDEEM:

- 1) The right to redeem only exists in actions for “**nonpayment of rent**” and applies to both residential and commercial tenants.
- 2) **The court has no authority to deny this right.** The judge can, however, limit the tenant’s ability to redeem the premises by either issuing an immediate writ or limiting how long the writ is stayed for (7 days or less). See number #3 below.
- 3) The court **has discretion** to allow the tenant up to 7 days to redeem. However, the tenant’s right to redeem is only available during the time the writ is stayed. And absent an agreement by the parties, the writ cannot be stayed longer than 7 days and must be based on a finding of substantial hardship. *M.S. 504B.291, subd 1(a)*. See # **THREE** above:
- 4) The right to redeem does NOT exist in actions filed ONLY for “***breach of lease***”.
- 5) The right to redeem MAY exist in cases involving claims of both ***nonpayment of rent and breach of lease***. For example, if the claims are contested, the court must first determine the ***breach of lease*** issue: *M.S. 504B.285, subd. 5*.
 - (i) If the landlord wins the ***breach of lease*** issue, the nonpayment issue becomes moot;
 - (ii) If the landlord loses the ***breach of lease*** issue, then the case becomes a standard ***nonpayment of rent*** case and the tenant would then have the right to redeem.

FIVE: PARTIAL PAYMENT OF RENT – WAIVER OF RIGHT TO EVICT:

In *nonpayment of rent* cases, since each month creates a new obligation, the landlord waives the right to evict for any month that landlord accepts partial payment of rent.

- a) **Exception - Written Agreement:** Once the eviction action has been filed, there should be no payments accepted by landlord UNLESS the parties agree IN WRITING that partial payment of rent accepted by landlord may be applied to the balance due and does NOT waive the landlord's right to evict for *nonpayment of rent*. *M.S. 504B.291, subd 1(c); Penn Oaks v. Williams, CX-98-171 (Mn. Ct. App. Aug 11, 1998)*.
- b) **Note:** Some landlords include similar language in their lease so the partial payment defense is not applicable to them. However, many leases do not have this language and, of course, this defense also applies to all oral leases.

SIX: RENT ESCROW: When Should A Judge Require A Tenant To Escrow Rent?

- 1) **Nonpayment of Rent:** When a tenant wants to redeem but there is a contested issue over how much rent is owed, the court can order that Tenant deposit any undisputed rent owed into court pending the trial. If deposit is not made, trial is waived and the Writ can issue. *M.S. 504B.291 subd. 1 (a) and (b)*.
- 2) **Nonpayment of Rent And Breach of Lease:** If the Landlord asserts both claims, the court cannot require a Tenant to deposit the rent into court until the *breach of lease* action has been resolved. If the court rules in favor of Tenant on *breach of lease*, then the court must allow Tenant the right to redeem, at which time the rent would be due. *M.S. 504B.285 subd. 5 (b)*.
- 3) **Habitability Defense:** A Tenant can request a trial on habitability issues in an eviction case provided Tenant deposits into court all rent due and owing to Landlord under the terms of the lease. If the case continues into a new rental period, Tenant can be ordered to pay future rent into court as it becomes due. In other words, tenants cannot simply assert this defense to buy more time in the leased property. *Fritz v. Warthen, 213 N.W.2d 339 (1973)* (also allows for the filing of "Adequate Security" other than the rent due-very rare); see *M.S. 504B.385*.

SEVEN: EVICTION TRIALS: Eviction Cases are not pseudo Conciliation Court cases. Although Eviction Actions are "summary processes," they are still District Court cases. If disputes of material fact have to be resolved to determine the case, a proper trial must be provided. The parties have a right to a court trial or a trial by jury. *M.S. § 504B.335(b)*.

- a) **Summary Judgment:** Summary judgment is appropriate if the parties' representations or submissions indicate no material facts are in dispute. Thus, if the parties' representations at the initial hearing show no dispute of material fact, the case can be decided at that point without trial. *Case Credit Corporation v. Hydra-Mac, Inc, File No. C5-04-662 (Minn. Ct. App. Oct. 25, 2005).*
- b) **Continuance of Eviction Trials:** The court, in its discretion, may grant a trial continuance for no more than six days unless all parties consent to a longer continuance. The only exception to this is if a material witness is not available, in which case the continuance can be as long as three months provided certain findings are made and a bond is posted during the pendency of the continuance. *M.S. 504B.341*

EIGHT: RETALIATION DEFENSES: Retaliation defenses under *M.S. 504B.285, subd. 2* **DO NOT APPLY** to *nonpayment of rent* cases (*tenants always have an obligation to pay rent*) or *breach of lease* actions (*e.g. smoking on a non-smoking lease, etc*). This defense of retaliation only applies to **holdover cases** based on a notice to vacate (*e.g. when a landlord attempts to terminate a tenancy by serving a notice to vacate on tenant*). This retaliation defense applies to both residential and commercial tenants. *Cloverdale Foods of Minnesota, Inc., 580 N.W.2d 46, 49 (Minn. Ct. App. 1998).*

NINE: EXPUNGEMENT FINDINGS: Expungement is allowed if plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case. In addition, Judges **MUST FIND** that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record. A settlement of the parties is not by itself sufficient, since the public's interest must be considered. In other words, there are three parties to an expungement action, plaintiff, defendant and the public. *M.S. 484.014.*

TEN: EQUITABLE RELIEF: There may be instances where a tenant's ability to assert their rights have been interfered with by a landlord who comes into court with "unclean hands". Generally, the decision to grant equitable relief is within the sound discretion of the district court and its decision regarding such relief will not be reversed absent an abuse of that discretion. *Classen v. City of Lauderdale, 681 N.W.2d 722, (Minn. App. 2004)*(*Classen was not an eviction case; equitable relief in eviction cases is, at best, an unclear area*).

SOURCES: Hennepin County Housing Court Referee Mark Labine and Paul Birnberg, Senior Housing Attorney, HOME Line, Tenant Advocacy Organization.