



MINNESOTA JUDICIAL TRAINING UPDATE

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HOUSING COURT - EVICTIONS: 12 BASIC RULES EVERY JUDGE MUST KNOW

EVICTION LAWS AND PROCEDURES are creations of statute and can be complex and confusing. Although Hennepin and Ramsey Counties 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 12 basic rules apply to all landlord-initiated eviction actions.

TYPICAL CLAIMS: Most eviction complaints are based on 1 of 2 claims:

- 1) **Nonpayment of Rent** (504B.291); and/or 2) **Breach of Lease** (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. *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn.1992); *Towers v. Schwan*, No. A07-1311 (Minn.App.2008); *301 Clifton Place LLC v. 301 Clifton Place Condominium Association*, 783 N.W.2d 551 (Minn. Ct. App. 2010) (extends the “Turnham” rule to LLCs as well as corporations).

Exception: Footnote 2 in *Towers v. Schwan* leaves open the possibility that an incorporated landlord may appear by a non-attorney agent with a “Power of Authority” in Hennepin and Ramsey County “Housing Courts”, which are governed by Minn. R. Gen. Pract. 600 et seq.

TWO: SERVICE OF COMPLAINT – STRICT COMPLIANCE: 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; *Koski v. Johnson*, 837 N.W.2d 739 (Minn.Ct.App.2013) (Minnesota law requires “strict compliance” to establish personal jurisdiction, substantial compliance is NOT sufficient.)

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 that immediate restitution of the premises would work a substantial hardship upon the defendant or 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 for the court to stay a writ past 7 days. 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. M.S. 504B.291 subd. 1(a).

THERE ARE 5 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 tenant up to 7 days to redeem. However, tenant’s right to redeem is only available during the time the writ is stayed. 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).
- 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 landlord wins the breach of lease issue, the nonpayment issue becomes moot;
 - (ii) If 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 & Breach of Lease:** If Landlord asserts both claims, the court cannot require a tenant to deposit 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. “The tenant shall be given up to seven days of additional time to pay any rent determined by the court to 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 “adequate security” other than rent due); *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 (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 a 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: 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. 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).

ELEVEN: 8% LIMITATION ON LATE FEES CHARGED BY LANDLORDS: M.S. 504B.177 (a) requires that a late fee for overdue rent for residential rental property be specified in writing. The statute also provides that "in no case may the late fee exceed eight percent of the overdue rent payment." **Note:** The provision that "in no case may the late fee exceed eight percent..." does apply to Public Housing tenancies and is not preempted by federal law. *HRA of Duluth v. Lee*, 852 N.W.2d 683, 687 (Minn.2014). The *Lee* court did not rule specifically about other federally subsidized housing programs' late fees.

TWELVE: IF EVICTION IS DISMISSED – AWARD \$200 COSTS TO TENANT: Under M.S. 549.02, subd. 1, a district court **MUST** allow the defendant in an eviction action \$200 in costs upon dismissal of the case. This rule applies even if the dismissal is without prejudice and is based on a procedural defect and there was no adjudication on the merits. *HNA Properties v. Moore*, 848 N.W.2d 238, 241 (Minn.Ct.App.2014).

Note – IFP Status: The \$200 costs shall be paid to tenant even if tenant was proceeding IFP. The statute requiring that money recovered by "settlement or judgment" by an IFP defendant be paid directly to the court administrator (M.S. 563.01, subd.1) does not apply. Statutory costs are **NOT** considered "money recovered by settlement or judgment." *Id.* at 243. This same rule would also apply in those rare cases involving an IFP landlord.

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