



Tip of the Month—April 2008

LANDLORD'S DO-IT-YOURSELF EVICTION ACTION

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1. **DO YOU HAVE A CASE?** Before you fill out the eviction action papers, you should determine whether or not you have a case. There are two questions to address:
 - a. Do you have a case as a matter of law? (For example, if you have a tenant with a one-year lease but no restriction on assignment, subletting, or unauthorized guests, the addition of another guest would not be grounds for a breach of lease case.) Grounds for eviction action:
 - i. Nonpayment of rent. (May not apply to nonpayment of security deposit and other charges. Problems can arise where part payments of rent have been accepted.)
 - ii. Holding over after notice from either landlord or tenant.
 - iii. Breach of lease. (Need to have lease and “right to reenter” or “eviction” clause if eviction action brought in middle of the month or middle of lease term.)
 - b. Can you prove it? Need actual witnesses with first hand information to prove case. Police reports from officers taking statements “after the fact” are not good evidence. Letters and even notarized statements from other witnesses are hearsay. Need to focus on facts you can prove. For example, you may suspect drug activity but cannot prove it. Yet could prove lease violation based on noise, violation of parking rules, or excess traffic.
 - c. Special rules and requirements apply to certain subsidized housing programs, manufactured home lot properties, cooperatives and other special rentals. These special rules are beyond the scope of this outline.
2. **FILLING OUT THE EVICTION ACTION COMPLAINT.**
 - a. Plaintiff. The plaintiff must be the owner or a managing agent with current right of possession.

If you are not signing in the name of the legal owner, you need to show person named as plaintiff has right to possess property.

If owner or managing agent uses a trade name, you need to show compliance with assumed name/trade name registration statute (Minn. Stat. §§ 333.001-333.06-- failure to comply can cost owners \$250 in costs).

If the plaintiff is a corporation, you may be required to get an attorney under court rules regarding unauthorized practice of law.

- b. Proper names of all defendants/adult occupants of premises. Birthdates. Law effective 8/1/96 requires landlords to provide birthdate or show birthdate not known.

Need to evict all residents. Cannot evict some but keep others. (Exception may apply in cases involving domestic violence and subsidized housing/Section 8 tenants under VAWA (Violence Against Women Act).

Should name all adult “possessors” of property whether or not they are under the lease.

If unknown adults, can name John Doe or Mary Roe but should provide some physical description to assist sheriff.

- c. Describe rental premises and specifically include street address or unit number. If the property is a duplex or other property that shares an address, be very specific in your description.
- d. Compliance with Minn. Stat. § 504B.181, subs. 1 and 2. Must be able to show compliance with statute to prevail in case. Local Housing Court rules for Hennepin and Ramsey Counties require the complaint to include a statement of compliance explaining how plaintiff has complied.
 - i. Written notice to tenant.
 - ii. Posting.
 - iii. Actual knowledge of tenant. If plead actual knowledge, put something in complaint to show why tenant would have this knowledge.
- e. State facts or grounds for recovery. (See paragraph 1a above.)
 - i. If this is an action for rent, state amount of rent and the date rent is due. If rent for more than one month is due, state specifically the amounts and time periods covered.

- ii. Hold over/termination. If you are alleging a hold over, Hennepin and Ramsey Counties” rules require that you attach a copy of the notice or provide a copy of the notice to the tenant at the hearing.
 - iii. Holding over after expiration of term of lease.
 - iv. Breach of lease. Be specific about what term of lease or rules tenant breached. It is not adequate to simply allege “breached lease.” Housing Court rules for Hennepin and Ramsey Counties require that a copy of the lease must be attached to the complaint or provided to the defendant at the hearing unless the plaintiff does not have a copy of the lease.
 - v. Illegal activities covenant. Under Minnesota law, certain criminal violations (drugs, prostitution, illegal gun possession) “void” a landlord’s or tenant’s right to possession. In most cases, it is preferable to prove a breach of lease where you suspect drugs or criminal activity. But even if you do not have a lease, a violation of the drug covenant can be grounds to recover possession of the premises.
 - vi. Other. Nonlandlord-tenant cases such as holding over after execution sale, expiration of mortgage foreclosure redemption period, or contract for deed termination.
 - vii. Can combine actions for nonpayment of rent and lease violations. In such cases, tenant will not be required to pay rent into court. Court hears lease violation case first.
- f. Signature on complaint. Complaint must be signed before a notary by the plaintiff, the plaintiff’s authorized agent, or a duly licensed attorney. If an agent is signing the complaint, check with local rules to determine what is required by the court. **SEE ATTACHED FILL-IN-THE BLANK COMPLAINT FORM AND POWER OF AUTHORITY OR ATTORNEY.** The local Housing Court rules for Hennepin and Ramsey Counties provide power of authority must be attached to complaint at time of filing.
- g. Special rules apply if defendant is in “active duty” of military service or a dependent of someone in military.
3. **FILING COMPLAINT.** Bring a copy of the complaint for each tenant that needs to be served to the court and pay filing fee. The court will issue summons with date of hearing.
4. **SERVICE PROCEDURES AND REQUIREMENTS.**
- a. Who can serve? Any adult, other than the plaintiff, can serve. Generally, caretakers can make service. BUT any person that is actively involved in issues

in the case or who may be a witness should NOT serve as the Referee may dismiss if server is a part of plaintiff's case.

- b. Personal service. Can serve individual tenant anywhere (such as at work) when service is personally served on them.
- c. Substitute service. Substitute service can be made if the defendant/tenant "cannot be found in the county" by serving:
 - i. Person of suitable age and discretion who lives at the home of the tenant.
 - ii. Service must be made at the tenant's residence.
- d. If service cannot be made personally or by substitute service, can go to posted service (also called "nail and mail"). These are the requirements:
 - i. Must make two attempts to serve personally or by substitute service on two different days with one attempt between 6:00 p.m. and 10:00 p.m.
 - ii. Check local rules and practice and your timing (do you still have enough time?) to determine if must return to court before proceeding with posted service to have summons reissued. May need to pay reissue fee at time affidavit of attempted service made.
 - iii. Affidavit of two attempts to make service and affidavit of plaintiff, or agent or attorney, that defendant/tenant cannot be found in the county.
 - iv. Depending on local rule and timing, may get new summons and complaint to mail or may be able to use original summons and complaint. Must mail summons and complaint to tenant. Plaintiff or plaintiff's agent or attorney who mailed summons and complaint does affidavit of mailing.
 - v. Affidavit of not found and affidavit of mailing must be filed with the court. After filing, summons and complaint can be posted on the premises.
 - vi. Affidavit of posting must be filed with the court. Housing Court rules for Hennepin and Ramsey Counties require affidavits to be filed by 3:00 p.m. three business days before the hearing.
- e. Timing of service.
 - i. Service cannot be made on Sundays or legal holidays.
 - ii. Service must be made no less than seven days before hearing date and no more than fourteen days before hearing date.

- f. Special rules may apply where subsidized housing program involved. Generally must provide copy of papers and notices to sponsoring agency.

5. **AFTER SUMMONS AND COMPLAINT SERVED BUT BEFORE HEARING.**
Cautions and pointers:

- a. Avoid actions that could “waive” or hurt your case.
 - i. Acceptance of less than full amount of rent. In nonpayment of rent cases, want to avoid accepting part payments unless have nonwaiver clause in lease and have clear (provable) agreement that you can proceed with case if full payment not made.
 - ii. Breach of lease and hold over cases. Acceptance of rent (even by accident) can waive or destroy hold over or breach of lease case. Make sure accounting department knows not to accept rent payments from tenants where eviction action is pending. If payment received, notify tenant that payment not accepted.
 - iii. Different rule may apply for housing assistance payments made under certain subsidized lease programs.
- b. In Hennepin and Ramsey Counties, Housing Court matters are heard by a referee. If you do not want your case heard by a referee, a request for a judge must be submitted 24 hours before the hearing.
- c. Settlement options. You are always free to settle a case with your tenant by agreeing to a payment plan, voluntary move out date, etc. It is a good idea to get settlement agreements in writing.
- d. Determine procedure for your county. Will you need to have your case ready to go to trial on the date in the summons? In Hennepin and Ramsey Counties, trials generally do not take place on the first appearance date but are set for a later date. Determine schedules of your witnesses and if subpoenas will be needed.

6. **INITIAL APPEARANCE AND TRIALS.**

- a. In Hennepin and Ramsey Counties, numerous eviction action cases are scheduled at one time. The first appearance is treated as initial appearance and contested cases are scheduled at a later date for trial.
- b. Uncontested or default cases. The plaintiff may receive immediate writ for cases that are not contested or are default cases.

- c. Uncontested cases for rent can still result in redemption. Minn. Stat. § 504B.291, subd. 1, where action solely for nonpayment of rent, tenant can redeem by paying “rent then in arrears” plus filing fee, service fee, \$5.00 statutory attorneys’ fees, and late fees that court finds reasonable. Landlord entitled to immediate payment of rent in arrears but court may give up to one week to pay costs.
- d. Redemption not immediately available where plaintiff claims both lease violation and nonpayment. If court finds no lease violation, then tenant entitled to pay and redeem.
- e. Landlord should not have to give tenant more than the day of court to pay rent. The court may urge landlord to wait longer but this is not required.
- f. If case is contested, either party can request trial by jury. A jury fee may be required.
- g. If defendant/tenant raises a defense where a trial on the issues are needed, landlord may request that rent withheld in reliance on defense be paid into court when rent comes due. (Housing Court Rule 608 for Hennepin and Ramsey Counties.)

7. **COMMON DEFENSES.**

- a. Procedural defenses (plaintiff/landlord failed to do any of the requirements discussed above relating to service, proper completion of form, filing of affidavits, etc.).
- b. General denial. In other words, tenant asserts plaintiff/landlord cannot prove his or her case.
- c. Affirmative defenses.
 - i. Nonpayment of rent defenses.
 - ii. Fritz or habitability defense.

Landlord has failed to make repairs or comply with statutory covenants of habitability.

Here it is helpful for landlord to have a move in checklist signed by tenant or lease requirement that tenant give notice of repairs.

Can landlord show that any disrepair was due to damage by tenant?

If tenant shows landlord has breached covenant of habitability, court will abate rent so that a portion (up to all) of the rent goes to tenant with the balance to landlord.

- iii. Retaliatory rent increase. If rents were raised after tenant requested repairs or other rights under landlord-tenant law, landlord may need to prove rent increase was not retaliatory.
 - iv. Inadequate notice of rent increase.
 - v. Failure by landlord to pay utilities where tenants have paid. Shared meter statute violation.
 - vi. Excessive late fees.
 - vii. Waiver of eviction by acceptance of rent.
 - viii. Argument that amount claimed due as rent is not rent but some other amount (such as balance owed on security deposit).
 - ix. Dismissal or stay required due to defendant being in active duty of military service.
- d. Holding over after notice to quit defenses.
- i. Inadequate or non receipt of notice.
 - ii. Waiver of notice by acceptance of rent.
 - iii. Beware of filing a holdover case and a nonpayment case. By filing a nonpayment case, this is the same as “demanding rent” and you will lose your holdover case.
 - iv. Retaliation. Tenant alleges notice was given after tenant asserted rights as tenant under landlord-tenant statutes. If tenant did some protected conduct within 90 days, burden is on landlord to show good faith reason for termination notice.
 - v. Discrimination.
 - vi. Special rules in mortgage, contract for deed, public housing, and mobile home park lot cases.
- e. Breach of lease defenses.
- i. Lack of reentry or eviction clause.

- ii. Waiver of breaches by accepting or asking for rent.
- iii. Issues where rules are violated but rules are not clearly part of lease or rules changed during lease term.
- iv. Request for reasonable accommodation by “disabled.”
- v. Retaliation.
- vi. Discrimination.
- vii. Special rules for public and subsidized housing, mobile home park lot rentals, etc.

8. **PROVING YOUR CASE AT TRIAL.**

- a. Bring all records and documents with you to court. Have extra copies to use as exhibits.
- b. Need eyewitnesses with “first hand” information. Signed and notarized statements are hearsay and will not be accepted.
- c. Make sure witnesses saw, heard, or otherwise experienced first hand the facts you want to prove.
- d. Special procedures and concerns where police officer’s testimony is needed and special issues with juvenile problems.
- e. Try to have your employees/resident managers be in a position to be first hand witnesses.
- f. Subpoenas. You can require witnesses to show up in court by serving them with a subpoena and paying a witness fee of \$20 plus current mileage rates per mile.

9. **POST TRIAL ISSUES.**

- a. If lose, have right to judge review where decision by Housing Court referee.
- b. Appeal.
- c. If win, tenant can request stay of writ of restitution for up to seven days.
- d. If rent issue, tenant may still redeem.
- e. Settlement will remain option.

10. **SERVICE OF WRIT AND MOVE OUT.**

- a. Order and pay for writ. Writ taken to sheriff for service. Writ gives tenant 24 hours to move.
- b. If tenant does not move, must schedule move out with sheriff. Have choice of using licensed and bonded moving company or doing inventory if personal property can be stored on premises.