

## Eviction Action

- An eviction action is a court action in which a landlord asks to recover possession of the premises from a tenant.
- A landlord may not use self-help to take possession of the premises. For example, a landlord may not forcibly remove the tenant, exclude the tenant from entry into the building or rental unit, change the locks, or cause the interruption of utilities.
- The three most common reasons for filing an eviction action:
  - Nonpayment of rent
  - Violation of lease
  - Holding over after notice to vacate

## Reasons for Filing an Eviction Action

### Nonpayment of rent

- An eviction action may be filed against a tenant for failing to pay rent when due. The tenant may redeem the tenancy at any time before possession of the premises has been delivered to the landlord by paying past due rent, costs of the eviction action, including the court filing fee, and other requirements under the lease.

### Violation of lease

#### Lease violations

- The lease must contain a “right of re-entry” or eviction clause for the landlord to evict a tenant for a material breach of a lease, except for nonpayment of rent and statutory violations. This clause gives the landlord a right to evict the tenant for violating lease provisions like disturbing other residents, causing damage to property, unauthorized persons living on the property, or unauthorized pets.

#### Illegal activities prohibited by Minnesota Statute

- A landlord may evict a tenant, or assign the right to the county or city attorney, if the

tenant engages in or permits activities named in statute, such as:

- unlawful controlled substances in the premises or common area
- unlawful use or possession of a firearm
- stolen property in the premises or common area
- prostitution
- criminal gang activity

### Holdover tenant

- A holdover tenant is one whose lease has expired or where proper notice to vacate has been given, but the tenant remains in the rental unit without the landlord’s consent.

## Eviction Action Procedure

### Who May Sign the Complaint?

- Property owner
- Attorney for property owner
  - An attorney may be required if the property owner is a corporation or LLC
- Person entitled to possession of the property
- Agent designated by property owner
  - Agent must file a *Power of Authority in Eviction Action* with the court at the time of filing the Complaint



## Complaint

- A Complaint must be filed with the court stating:
  - full name and date of birth of the tenant(s), unless not known
    - Evict all residents by naming each adult resident whether or not named in the lease (use “John Doe” or “Jane Doe” if necessary)
  - full address (or other description if no address) of the premises of which possession is claimed
  - facts which authorize recovery of possession, and
  - request for recovery
- The landlord must show compliance with Minn. Stat. § 504B.181.
  - Landlord must (1) disclose in writing to the tenant and (2) post in a conspicuous place on the premises the name and address of:
    - The person authorized to manage the premises, and
    - Landlord or agent authorized to accept service of process and receive and give receipt for notices and demands, OR
  - Tenant must have been aware of this information at least 30 days prior to filing the action.
- The landlord must bring a copy of the Complaint for each tenant and pay the court filing fee.

## Summons

- The Summons is a written notice issued by the court informing the defendant that a legal action has been filed and will be heard on a specific day.
- The Summons must be served at least 7 days before the court date, as required by Minnesota Statute, and proof of service must be filed with the court in accordance with local court rules.

## Serving the Summons and Complaint

*Proper service upon the tenant is critical. Without proper service, the court will lack jurisdiction and the landlord may have to start over or ask the court to reissue the Summons.*

## Personal Service

- Must be served by a person NOT NAMED a party in the action.
- Must NOT be served on a legal holiday.

## Substitute Service

- If the tenant cannot be found in the county, service may be made upon a person of suitable age and discretion who lives with the tenant.

If personal or substitute service was successful, the process server files a notarized *Affidavit of Service* with the court.

## Mail and Post

- If personal or substitute service was unsuccessful (service on the tenant was attempted twice, on different days, with at least one of the attempts having been made between the hours of 6:00 p.m. and 10:00 p.m.), the Summons and Complaint are mailed to the tenant’s last known address and posted at the premises.
- This procedure requires the preparation of affidavits, court filings of the affidavits, mailing, and posting in proper order. Failure to do steps and filings in the correct order can result in a case being dismissed.

- The Summons and Complaint are mailed to the tenant’s last known address.
- The process server signs a notarized *Affidavit of Not Found*.
- The landlord or landlord’s attorney or agent completes notarized copies of the *Affidavit of Plaintiff* and *Affidavit of Service by Mail*.
- The *Affidavit of Not Found*, *Affidavit of Plaintiff*, and *Affidavit of Service by Mail* are filed with the court.
- The Summons and Complaint are posted on the premises at least 7 days before the court date.
- The *Affidavit of Service by Posting* is completed and filed with the court.

## Trial

- At trial, the burden is on the landlord to show that he/she is entitled to regain possession of the premises. Proof may be shown through the use of witnesses with firsthand information, photographs, documents, such as the lease, payment records, and correspondence with the tenant, and landlord testimony.

### *Common Defenses*

- *Procedural defenses* – landlord executed service improperly, completed the forms improperly, etc.
- *Habitability defenses* – landlord failed to make repairs or comply with the covenants of habitability.
- *Retaliation defenses* – landlord took action in retaliation of tenant's exercise of legal rights.
- *Waiver of eviction by rent acceptance* – landlord accepted rent payment after eviction action was filed without a written agreement.
- *Trade name not registered* – business operating under an assumed trade name not registered with Secretary of State.
- *No "right of reentry" clause* – eviction action filed for lease violation but no "right of reentry clause" in the lease.

### Notice of Eviction

- If the landlord prevails at trial, a *Writ of Recovery of Premises and Order to Vacate* may be requested by the landlord for a fee. The sheriff must serve the notice upon the tenant who then has 24 hours to vacate the premises. The court may suspend the issuance of the writ for up to 7 days upon showing by the tenant that immediate vacation of the premises would impose a substantial hardship.
- If the tenant fails to comply with the demand to vacate the premises, the landlord must schedule a move-out date with the sheriff and notify the tenant of the time scheduled with the sheriff. The landlord may store the tenant's personal property on the premises or use a licensed and bonded moving company to remove and store at another location.

The Minnesota Multi Housing Association (MHA) was founded in 1967 to promote the highest standards in the development, management and maintenance of rental and owner-occupied multi housing. Our nearly 2,100 members together own or manage more than 300,000 multi family units in the state. While members include the state's largest apartment management companies, developers, common interest communities, and providers of related products and services, the majority of our members own or manage fewer than 20 units each.

For more information about MHA, visit our website ([www.mmha.com](http://www.mmha.com)) which includes information on upcoming seminars, forms and leases, a buyer's guide specific to the industry, and other resources.



The information contained in this brochure is only intended as a brief introduction to filing an eviction action in Minnesota. Many complicated issues have been simplified. It is neither professional nor legal advice. You should contact your attorney or other advisor to discuss any legal or other issues you may have.



## Resource Information

### **Minnesota Multi Housing Association**

Main phone: 952-854-8500

Hotline: 952-858-8222

Website: [www.mmha.com](http://www.mmha.com)

Attorney and Eviction Services members  
[www.mmha.com/Resources/yellowpage.asp](http://www.mmha.com/Resources/yellowpage.asp)

### **Minnesota Courts**

Forms for filing an eviction action can be found at [www.mncourts.gov](http://www.mncourts.gov) and at the Housing Courts in Hennepin and Ramsey Counties.

### **Hennepin County Housing Court**

Main phone: 612-348-5186

Website: [www.mncourts.gov/district/4/?page=128](http://www.mncourts.gov/district/4/?page=128)

### **Ramsey County Housing Court**

Main phone: 651-266-8230

Website: [www.mncourts.gov/district/2/?page=53](http://www.mncourts.gov/district/2/?page=53)

### **Minnesota State Legislature**

Website: [www.leg.state.mn.us](http://www.leg.state.mn.us)

Eviction Statutes MN Stat. §504B.281-.371

### **Minnesota Attorney General**

Hotline: 651-296-3353

Landlord/Tenant Handbook

[www.ag.state.mn.us/consumer/housing](http://www.ag.state.mn.us/consumer/housing)

### **MN State Bar Association Lawyer Referral**

Main phone: 612-752-6666

Website: [www.mnfindalawyer.com](http://www.mnfindalawyer.com)

# How to File an Eviction Action in Minnesota

A RESOURCE FOR  
RESIDENTIAL PROPERTY  
OWNERS AND MANAGERS



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**Minnesota Multi Housing  
Association**

MARCH 2017