

RESIDENTIAL EVICTIONS¹

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- I. Background: Unlawful Detainer Actions
 - A. In Minnesota, the suit for eviction of a tenant is called an Unlawful Detainer. Minn. Stat. §504B.301.
 - B. The Unlawful Detainer action is necessary because taking possession by force is unlawful. Minn. Stat. §504B.281.
 - C. The action is for *possession of the premises only*; other rights, for example payment of back due rent must be litigated separately. Warnert v. MGM Properties, 262 N.W. 2d 364 (Minn. Ct. App. 1985)
 - D. The action is a summary action, meaning that it is meant to resolve the issue of possession quickly.
 - E. The “Right of Distress,” i.e. seizing a tenant’s belongings in lieu of rent payment is also unlawful. Minn. Stat. § 504B.101. Note: A lien can be asserted against a tenant’s belongings, post unlawful detainer, as is described in detail below.
- II. Grounds (per Minn. Stat. § 504B.291)
 - A. Non-payment of rent.
 - B. Holding over after expiration of term.
 - C. Failure to vacate the premises after notice to quit.
 - D. Breach of implied covenants under Minn. Stat. § 504B.171, which applies to possession of drugs, prostitution, unlawful use or possession of a firearm, presence of stolen property, or manufacture or sale of a controlled substance. Violation “voids tenants . . . right to possession of the rental premises”

¹ The attached materials are intended to be used for educational purposes only and are not a substitute for legal advice as to any given situation.

III. Form of Unlawful Detainer Complaint.

A. Plaintiff

1. Actual owner of the property should be named.

B. Defendant

1. Must provide the full name and date of birth of the defendant unless they are not known. Minn. Stat. § 504B.32.
2. All tenants should be named. The writ of recovery cannot be asserted against the person who is not a party except a family member of a tenant pursuant to Minn. Stat. § 504B.365.

C. Address of Premises

1. The address needs to be sufficiently specific to allow the Court to determine its jurisdiction.
2. The address needs to be sufficiently specific to allow the Sheriff to serve the Writ of Recovery. (Minn. Stat. § 504B.321.

D. Compliance with Minn. Stat. §504B.181

1. Landlord must disclose to tenant name and address of manager and owner or agent authorized to accept service of process.
2. Ordinarily this information need not be included in the Complaint (although it is a good practice. However, Ramsey and Hennepin County require it under Housing Court Rule 26.03.

E. Grounds

1. Must state one of the bases listed in Section II

IV. Filing the Action

A. Court Fee

B. Number of Copies

C. Selecting Hearing Date

- V. Service of Summons and Complaint (Minn. Stat. § 504B.331)
- A. The Court shall issue the Summons pursuant to Minn. Stat. §504B.321.
 - B. Who can serve? Anyone not a party can serve.
 - C. Personal Service: Service of the Summons and Complaint upon the defendant.
 - D. Substituted Service (if defendant has a place of abode): If the defendant cannot be found in the county, service on a family member or other person of suitable age at defendants place of abode is permitted.
 - E. Substituted service (if defendant has no place of abode): Service may be accomplished by leaving a copy at the property described in the Complaint with a person of suitable age and discretion.
 - F. Posted service. If the defendant cannot be found in the county, service of the Summons may be made upon the defendant by leaving the Summons in a conspicuous place in the property for not less than one week.
 - 1. If the property is residential, service must have already been attempted twice and at least one of those service attempts must have been made within the hours of 6 p.m. and 10 p.m.
 - 2. If this service method is used, an affidavit must be filed stating the basis for the service and a copy of the Complaint must be mailed to the defendant at the defendant's last known place of residence.
 - G. Timing of Service
 - 1. The Summons must be issued between seven and 14 days prior to the Court hearing.
 - 2. The Summons must be served at least seven days before the Court hearing.
 - H. Filing of Affidavits: Affidavits of Service will need to be filed with the Court to establish that the defendants were properly served under one of the methods described above.
 - I. Expedited Procedure: Where tenants have violated covenants contained in Minn. Stat. § 504B.171, constitute a nuisance, or engage in illegal behavior endangering other residents or the property of the landlord, an affidavit may be filed with the judge who may determine that Minn. Stat. § 504.321 applies. A hearing can be held within five to seven days after

issuance of the Summons and service of the Summons must be made within 24 hours of this issuance. If insufficient basis for this procedure is found with the Court, a fine for abuse of process for up to \$500.00 can be assessed against the landlord.

- J. Harassment and restraining order grounds: Pursuant to Minn. Stat. §504B.325, actions of a tenant which threaten the safety and security of another, constitute “targeted residential picketing” or include attending public events after being notified that said attendance constitutes harassments, can be a basis for an expedited unlawful detainer under 504B.325 (and 504B.321, which is incorporated). The party seeking the expedited relief would need to seek a protective order under Minn. Stat. §609.748 or file a complaint under 504B.321.

VI. Pre-Hearing Cautions

A. Partial rent payment

- 1. Waiver- Acceptance of partial rent payment can constitute waiver by the landlord which would deny the landlord the right to maintain the unlawful detainer action based on breach for failure to pay rent
- 2. Notice to quit- Acceptance of partial payment will invalidate a notice to quit if rent is accepted after the date to quit started in the notice.

B. Settlement Options.

VII. Hearing

A. Uncontested

- 1. The Court will enter an order by default.

B. Settlement Agreements

- 1. If an agreement is made at court, it is wise to still appear before the Court to memorialize the settlement in the form of an order.
- 2. This agreement should be combined with issuance and a stay of the Writ of Recovery for said period so that if the tenant violates the agreement/order, the landlord can proceed to recover the property.

C. Contested Hearings

1. If the tenant disputes the action, the tenant is allowed to file his or her answer orally pursuant to Minn. Stat. § 504B.335.
2. The matter will then be heard or continued over for hearing for a period of not in excess of six days unless all parties agree to a longer period pursuant to Minn. Stat. § 504B.341.
3. The matter can be continued for three months by motion of a defendant/tenant if a material witness is required and a bond for accruing rent, costs and damages is posted. Minn. Stat. §504B.341.

- D. Exception to unlicensed practice of law restrictions: A management company employee or employee of landlord may bring an unlawful detainer action pursuant to Minn. Stat. §481.02.

VIII. Defenses

A. Procedural

1. Failure to make proper service

B. General denial

1. An allegation by the tenant that the facts as stated in the Complaint are not true

C. Affirmative defenses: Payment of rent

1. Rent has been paid
2. Inhabitability of the premises- If the tenant is able to establish that the premises have not been habitable, Tenant may be entitled to a set off of rent
3. Retaliatory
 - a. If the rent has been increased as retaliation pursuant to Minn. Stat. § 504B.285, subd. 3, that is a defense of payment of rent.
 - b. The tenant must tender the amount of rent due before the increase in order to make this defense.
4. Inadequate notice of rent increase

5. Waiver (See above)
- D. Affirmative Defense- Holding over after notice to quit
1. Inadequate Notice to Quit given
 2. Notice to quit has been waived (See above)
 3. Retaliation
 - a. If notice to quit was given due to tenant's good faith attempt to protect his rights through a good faith report to a governmental authority of a health, safety, housing, or building code or ordinance violation. Minn. Stat. §504B.285, subd. 2.
 - b. If the unlawful detainer is brought within 90 days of these acts, the burden of proof to show that the notice to quit was given in retaliation *is on the landlord*, Minn. Stat. §524B.285, subd. 2.
 4. Discrimination
 - a. For discrimination against a member of the protected class
 - i. The Minnesota protected classes are race, sex, color, religion, familial status (having children), receipt of public assistance, sexual orientation, marital status, disability, national origin, or creed. Minnesota Human Rights Act, Minn. Stat. § 363A.01 et seq.
 5. Non-receipt of lease (see above)
- E. Affirmative Defenses- Breach of Lease
1. Lack of re-entry clause (does not apply to non-payment of rent)
 2. Waiver (see above)
 3. Retaliation
 4. Discrimination
 5. Non-receipt of lease

- a. Pursuant to 504B.11- one, the non-receipt of lease provision does not apply if the breach is for 1) malicious destruction of property, 2) disturbing the lease, or 3) breach of illegal drug covenant under Minn. Stat. §504B.171

IX. Proving Your Case

- A. Witnesses
- B. Records
- C. Special concerns with police
- D. Subpoenas
 1. Must be issued by the Court
- E. Jury
 1. Tenant has the right to trial by jury

X. Writ of Recovery

- A. Timing
 1. Writ of Recovery is issued immediately if the Court finds for Plaintiff under Minn. Stat. § 504B.345.
 2. Defendant may get a stay of the writ for seven days if the defendant can show hardship.
 - a. Exception: If the action is brought under Minn. Stat. §504B.171 or there is a nuisance or endangerment of other residents or the landlord's property

XI. Service of Writ

- A. Serve by Sheriff pursuant to Minn. Stat. § 504B.365
 1. This would include a 24-hour notice of vacate.
- B. Service can be made personally, by substituted service, or by posting the writ in a conspicuous place on the property for 24 hours.

- C. If tenant does not comply, plaintiff must arrange for the Sheriff to return and remove the tenant, with the plaintiff to pay the cost pursuant to Minn. Stat. §504B.365(c).
- D. If tenant's things are removed from the premises:
 - 1. A bonded moving company must be used.
 - 2. Landlord will have a lien for cost of moving the tenant out if items are moved pursuant to Minn. Stat. § 504B.365, subdivision 3.
 - 3. Landlord must give tenant notice of sale, but can sell items at public sale after 60 days. Minn. Stat. § 514.18-514.22.
- E. If the property is still on the premises, an inventory must be prepared by the landlord.

XII. Post-Judgment Lien

- A. Landlord has lien against tenant's personal items for the expense of moving and storage, if the landlord actually moves and stores the tenant's belongings. Minn. Stat. § 504.365.

XIII. Appeal

- A. Time frame: Either party may move for appeal of the decision within ten days (Minn. Stat. §566.12)
- B. Bond requirement: To proceed with an appeal, tenant must pay rent accruing during appeal (Minn. Stat. §504B.371).

XIV. Redemption

- A. Under Minn. Stat. §504B.291, if tenant pays the arrearages and costs at any time before delivery of possession, tenant is reinstated. If unlawful detainer was brought for non-payment of rent (Minn. Stat. §504B.291)

Scott M. Lucas practices real estate and business law. He has represented individuals and entities in a broad spectrum of transactional and litigation matters including unlawful detainer actions, corporate real estate acquisitions, substantial income property purchases, 1031 tax-deferred exchanges, small business purchases, breach of contract actions, the formation of corporations and limited liability companies, Torrens matters, eminent domain actions, mechanic's lien actions, easement issues, and real estate contract terminations.

Scott has a broad business background—including marketing commercial real estate, holding an independent (Indiana) real estate broker's license, and assisting in the management and marketing of a title insurance agency—that helps him to better understand legal issues from his clients' perspectives. As a result, he strives to help his clients manage risk while pursuing their objectives, in the awareness that eliminating risk altogether can mean missing opportunities.

Scott is board-certified as a Real Property Specialist by the Minnesota State Bar Association, a designation that reflects both experience and expertise in real property law. He is licensed to practice before the State and Federal Courts of Minnesota and Indiana, and has spoken and published on a variety of property law and business topics. Scott attended law school at Valparaiso University, where he was Executive Editor of Publication for the Valparaiso University Law Review. Prior to that, Scott attended Wabash College in Crawfordsville, Indiana, where he majored in Economics.

Scott lives in Shakopee, Minnesota, with his wife and three daughters.