

Housing Court Advice Clinic

Volunteer Training

July 19, 2018



Program

- Legal Overview of Eviction Law
 - Laura Jelinek – Senior Leadership Attorney, SMRLS
 - Kristin Holmes – Supervising Housing Attorney, SMRLS
- Eviction Scenarios
 - Lawrence McDonough – Pro Bono Counsel, Dorsey & Whitney LLP
- How the Clinic Works
 - Muria Kruger – Housing Resource Attorney, VLN
 - Carol Bros – Volunteer Attorney Program Supervisor, SMRLS



Main topics

- Housing court basics
- Reasons for eviction
- Common defenses
- Resources, advice, and encouragement

Housing Court

- Evictions
- Important laws and rules
 - Minn. Stat. Sec. 504B
 - Housing Court Rules Gen. Prac. 601-612
- Eviction Records



Housing Court schedule

- First appearances
- Continuances
- Motions
- Trials
- Appeals
- Writs

Summons and Complaint

State of Minnesota Ramsey County	District Court Second Judicial District Court File Number: 62-HG-CV-18-12345 Case Type: Eviction (UD)
John Doe vs Mary Rowe	
EVICITION SUMMONS (Minn. Stat. § 504B.321)	
THE STATE OF MINNESOTA TO THE ABOVE-NAMED DEFENDANT(S): YOU ARE SUMMONED to appear before this Court on the date, time and place indicated below for a hearing on the attached Complaint. The original complaint is on file with the court. If you do not appear and contest the claim, judgment may be entered for the plaintiff/landlord.	
Hearing Date set for: January 16, 2018 at 8:15 AM in Ramsey County Courthouse before the Honorable Christy Snow-Kaster Located at: 15 West Kellogg Blvd, 131A Courthouse 651-266-8230	
This is an EVICITION SUMMONS	
On the date and at the time shown above, the judicial officer will decide whether you will have to move or whether you can continue to stay in your home. You must be on time for court.	
IF YOU DON'T COME TO COURT	
The judicial officer can order you to move immediately; and if you do not move, the sheriff can move you out and put all your belongings into storage. You will then have to pay the storage and moving costs before you can get your belongings back.	
YOU HAVE RIGHTS	
YOU HAVE THE RIGHT to come to court and tell your side of the case. For example,	
<ul style="list-style-type: none"> • If you believe that all or some of the things that your landlord says in the attached papers are wrong, you can tell those things to the judge. • If you believe that your landlord is trying to evict you because of something you did to protect your rights as a tenant, you can explain that to the judge. • If the attached papers say that you have not paid rent, and you believe that your apartment is in bad condition and needs repairs, you can tell that to the judge. Bring total rent owed to court hearing. • You may have other defenses. You should research the law or ask an attorney. • You may come to court and speak for yourself or you may have a lawyer with you to represent you. 	
REPRESENTATION	
If you want a lawyer, you must get one right away.	
Attorneys may be available at the courthouse to provide legal advice regarding your hearing, if you are income eligible. Plan to arrive by 8:15a.m. if you wish to speak to an attorney right before your hearing. The attorneys will meet with clients on a first-come, first-serve basis.	
A corporation or LLC must be represented by an attorney in District Court. This includes having an attorney sign court papers on behalf of the client corporation or LLC.	

State of Minnesota County of: _____	District Court Judicial District: _____ Court File Number: _____ Case Type: Housing
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EVICITION ACTION COMPLAINT

(Minn. Stat. §504B.321)

Plaintiff #1 (Landlord) Name: _____ Address: _____ City/State/Zip: _____	vs.	Plaintiff #2 (Landlord) Name: _____ Address: _____ City/State/Zip: _____
Defendant #1 (Tenant) Name: _____ Address: _____ City/State/Zip: _____	vs.	Defendant #2 (Tenant) Name: _____ Address: _____ City/State/Zip: _____

Check box is there are more than two plaintiffs or more than two defendants. List the information for the other parties on the *Additional Litigants Form*, HOU125.

1. Rental Agreement

Landlord leased or rented property located at: _____
 Apartment # _____ in the city of _____, the state of Minnesota,
 Zip Code _____, in the county of _____ and
 does does not include a garage.
 The agreement for the property, beginning from _____ and ending
 _____ is an ORAL or WRITTEN agreement and is for:
(Check all that apply)

Payment of Rent. The current rent due and payable under this agreement each month is
 \$ _____ due on the ____ day of each month.

Exchange of Services. The agreement for exchange of services was: (explain in detail)

2. Notice of Right of Possession by Landlord for Residential Leases

Summons and Complaint

- Filing fees
- Service
 - Must be served 7 days before hearing
 - Personal service
 - If unable to personally serve Plaintiff may use Substituted service
 - Affidavit of service must be filed before the first appearance

Grounds for eviction

- Non-payment of rent
- Breach of lease
- Holdover after lawful notice
- Unlawful activities
 - Illegal controlled substances
 - Prostitution
 - Illegal use or possession of a firearm
 - Allow stolen property obtained by robbery

Non-Payment of Rent Defenses

-Habitability

- Landlord has failed to make repairs

-Late Fees

- Capped at 8% of unpaid portion

-Acceptance of Rent or partial payment

- Can constitute waiver by landlord

-Tender of Rent

-Rent Receipts

- Statutory presumption in 504B.291

Non-Payment of Rent Advice

- If there is a defense
 - Negotiate
 - Ask for a trial
- Often the undisputed portion of rent will need to be posted (paid into court)
- Rent will need to be posted in repair cases

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Plaintiff(s)

Court File No. 62-HG-CV-_____

vs.

SETTLEMENT AGREEMENT

Defendant(s)

IT IS HEREBY STIPULATED AND AGREED between the parties as follows:

Parties agree to the following payment schedule:

Date Payment is Due	Time Due (if applicable)	Amount Due	Form of Payment (Money Order, Certified Funds, etc.)
/ /	AM / PM	\$	
/ /	AM / PM	\$	
/ /	AM / PM	\$	
/ /	AM / PM	\$	
/ /	AM / PM	\$	
/ /	AM / PM	\$	

- No Writ of Recovery is requested at this time. This signed agreement serves as settlement.
- Case shall be expunged, upon Plaintiff filing an Affidavit of Compliance.
- Defendant(s) shall vacate on or before _____ or a Writ of Recovery shall be issued by default and by request and payment of fee.
- If there is a violation of the above terms, judgment may be entered and Plaintiff may obtain a Writ of Recovery, upon filing of an affidavit establishing such fact.
- If a Writ of Recovery issues, Plaintiff may file an affidavit requesting costs and disbursements allowed by statute, and the Court shall award a judgment against Defendant for allowable costs and disbursements.

I have read, understand, and agree to be bound by this Settlement Agreement without appeal or further litigation:

PRINT Plaintiff(s) NAME

PRINT Defendant(s) NAME

SIGNATURE OF OWNER/AGENT/ATTORNEY

SIGNATURE

Date _____

SIGNATURE
Date _____

Non-Payment of Rent Advice

- Right of Redemption
 - Non-payment eviction is a demand for rent
 - Tenants have the right to pay the rent plus costs and fees and remain in possession
 - Tenants can ask for 7 days
 - Tenants can request Agency guarantee be made within 7 days
 - Tenants can ask for Expungement upon payment
 - Owners can get a Writ if not paid

Non-Payment of Rent Advice

- Tenants can leave voluntarily
- Can ask for up to 7 days
 - Disabled
 - Children
- Can ask for expungement
- If the tenant does not move a writ will issue

Non-Payment of Rent Advice

- Payment agreements over time can be dangerous
- Tenants can miss payment 8 of 10 and a Writ will issue
- Court requires (nearly) strict compliance with Settlement

Holdover Defenses

- Proper notice is:
 - Written
 - Dated
 - Notice period one month plus one day
 - Or, longer if lease requires it
 - Must end at the end of a rental period

Holdover Defenses

- Tenant in a foreclosed property
- Domestic Violence
- Retaliation
 - w/in 90 days of tenants attempt to enforce rights
 - Presumed retaliation
 - Burden shifts to the owner to show a non-retaliatory reason
- Waiver
- Discrimination

Holdover Advice

- Can ask for a trial
 - Court may be reluctant to grant if notice appears proper
- Can agree to move
- If there is a settlement request Expungement

Breach of Lease Defenses

- Is there a lease?
- Is it attached to the complaint?
- Did the tenant engage in the behavior alleged in the complaint?
- Was the breach material?
- Did the owner accept rent after knowledge of the breach?

Breach of Lease Defenses

- Discrimination –
- IF A TENANT LITIGATES THIS IN HOUSING COURT AND LOSES they lose their right to file an affirmative discrimination case.

Barnes v. Weiss

- Domestic Violence
- Reasonable Accommodation

Breach of Lease Advice

- Tenant can ask for a trial
- Owner has the burden of proving the violation
- Tenant can bring witnesses and evidence to show there was no breach
- (Tenant can also ask for 7 days to vacate and expungement)

Unlawful Activities

- Statutory Covenant §504B.171
 - Implied in every lease, even if not written
- Reference to Criminal statutes
- Knowledge Defense
 - Must know or have reason to know of activity
- LL can ask for expedited hearing
 - Because of unlawful activities or if tenant is causing a nuisance or other illegal behavior
 - “Not less than five days nor more than seven days from the date the summons is issued. The summons, in an expedited hearing, shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown.”



Resources

- Eviction Defense Protocol - with pop up scripts
- SMRLS Housing Attorney
- Housing Resource Attorney - VLN
- Eviction Defense Manual

Eviction Defense Outline

Eviction Defense Protocol
Draft 7/16/2018

SERVICE DEFENSES

1. Personal Service
 - a. Was the summons and Complaint served?
 - b. By someone other than Plaintiff?
 - c. 7 days before the hearing?
 - d. On someone of suitable age and discretion?
 - e. Was the affidavit of service filed?

If any answer is No – Insert Script 1

2. Substituted Service
 - a. Mailed and posted?
 - b. By someone other than Plaintiff?
 - c. 7 days before the hearing?
 - d. Was the affidavit of service filed?

If any answer is No – Insert Script 2

DISCLOSURE DEFENSES

1. Did the owner disclose his/her address prior to filing?
2. Is the owner's address a physical place where service can be accepted (not a P.O. Box)?

If any answer is No – Insert Script 3

GROUND FOR EVICTION

Combined allegations? No posting required

Holding Over Defenses

Creates Pop-up Window in Word to Print for Tenants

Script 1

Defense: The summons and complaint was not served properly because

Law: Minn. Stat. §504B.331 requires strict compliance in service.

Relief: I am asking the court for the following relief: Dismiss the eviction case.

Advice

- Ask for a continuance
- Ask for trial
- Ask for an expungement
- Ask for more time
- Try to agree on a solution to the problem



Eviction Scenarios

Larry McDonough

How the Clinic Works

Where and When?

- Ramsey County Courthouse, lobby outside Courtroom 131
- Clinics held every Tuesday and Thursday the Court is in session.
- Shifts run from 8:00 am until Noon
 - Clients start arriving at 8:15
 - Court begins at 9:00

How the Clinic Works

Legal Services Provided

- Advice only – before hearing

Resources For You

- Laptop with Eviction Defense Protocol
- Internet access and printer
- Access to filed court documents (MPA-Courthouse)
- Ramsey County Emergency Assistance and Dispute Resolution Center located near by in Room 70

How the Clinic Works

What if a client needs more help than Advice?

- Check with the Clinic Assistant
 - If you want to keep working with client, we can arrange that
 - Both VLN and SMRLS can refer cases to volunteer attorneys or staff for additional help.

How the Clinic Works

What parts of the Clinic Data Sheet do I fill out?

- Fill out the back page
 - The client will have filled out the front page before you receive the Data Sheet
 - Include the amount of time spent with that client
 - Record your advice give to that client specific to the client's situation.

How the Clinic Works

Make the most of your time

- Be clear with client – you have about 20 minutes to work with them.
- Let client tell their story
- Keep the client on track – gently
- Write clear, step by step instructions of next steps
- Be sure to give client the appropriate script

How the Clinic Works

What if a client does not speak English?

- Court interpreters may be able to help
- See clinic assistant – phone translation services available

What happens at the end of my shift?

- Leave when no more clients waiting, but first
 - Review your Data Sheets for completion
 - Checkout with the Clinic Assistant and hand in Data Sheets

How the Clinic Works

What if I cannot make my shift?

- Contact your organization ASAP
 - SMRLS – Andrea Palumbo
andrea.palumbo@smrls.org, 651-222-5863
 - Maisa Al-Wahaibi maisa@vlnmn.org, 612-752-6650

How do I sign up for more shifts?

- Same contacts as above

Contacts

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Questions???



Thanks for joining the
Ramsey County Housing
Clinic