

III. Landlord Rights and Options: When the Deal Goes Bad

A. Straightforward lease violations

The terms of a lease set forth duties and obligations for both the tenant and landlord. Additionally, there are statutory covenants that are written into every lease. The failure to meet those terms and covenants can cause a breach in the lease that creates a legal problem between the landlord and its tenants. Such a breach can lead to eviction actions, tenants abandoning the rented property and legal actions for damages. The statutory covenants are included in every lease and those obligations are the broadest reaching, so they will be addressed first. The breach of lease terms can vary as much as the language of a lease. However, a few of the most common breaches will be addressed along with the legal remedies.

1. *Necessity of a Right of Reentry Clause*

To regain possession for a breach in the lease terms there must be a Right of Reentry in the lease language.¹ Oral leases are typically understood not to have a right of reentry unless proven that it was agreed to between the parties. However, it has been argued that the Unlawful Detainer statute allows a Writ of Restitution for a breach of the lease language without a need for a Right of Reentry.² Regardless, it is accepted that the statutory covenants for illegal activity imply a Right of Reentry despite any inclusion in the lease.

2. *Statutory Covenants*

As mentioned, the Minnesota statutes provide terms that are included in every lease regardless of its duration and whether it is oral or written.³ These covenants cannot be waived or modified.⁴ However, the lease can provide for certain duties, such as repairs, to be granted to the tenant as long as they are conspicuously written into the lease and provide adequate consideration.⁵

The first and broadest covenant is the **Covenant of Quiet Enjoyment**. This essentially is a promise that the landlord will not evict the tenant during the lease unless there is a disturbance

¹ Bauer v. Knoble, 53 N.W. 805 (Minn. 1892).

² C & T Properties v. McCallister, 1999 WL 10262 (Minn. App. Jan. 12, 1999) (unpublished).

³ Minn. Stat. Ann. § 504B.161 (West 2007).

⁴ Minn. Stat. Ann. § 504B.161, subdivision 2 (West 2007).

⁵ *Id.*

or breach by the tenants.⁶ This is the covenant that prevents lockouts and gives the tenant possession of the leasehold premises for the duration of the lease. The tenant is protected from a reentry by the landlord without justification of a tenant breach. There must commonly be a breach in the lease, the covenants or some type of illegal activity by the tenant to remove the tenant's right to quiet enjoyment. If the landlord disrupts the quiet enjoyment of the tenant without cause, a court action by the tenant can reinstall the tenant into possession.

The second statutory covenant is the **Covenant of Habitability**.⁷ This requires the landlord to keep the premises and all common areas fit for their intended use, typically reasonable repair. However, any disrepair that has been caused by the willful, malicious, or irresponsible conduct of the tenant will not be a breach of the covenant by the landlord. This also includes health and building codes for the property.⁸ If the leasehold property has not been kept up with repairs and codes, the courts are very likely to consider it uninhabitable and release the tenant from the lease.

The third statutory provision, included in every lease, is the prohibiting of any **unlawful activities**.⁹ This restricts either the landlord or tenant from allowing illegal activities to occur on or in the property. Illegal activities commonly restricted under this section include the manufacturing, distribution or acquisition of drug trafficking, prostitution, stolen property and firearms. An Unlawful Detainer action can be brought for these actions to return the premises to the possession of the party to the lease not at fault for the illegal conduct.¹⁰ This is commonly used to allow a landlord to remove a tenant that is selling or using drugs on the premises but can be used against a landlord if they are knowingly using the property for illegal activity.

3. *Common Lease Term Violations*

The terms of a lease create a contract between the landlord and a tenant for the duration stated. A failure of either party to live up to the promises of that contract is a breach and can remove duty for performance by the other side, remedies for damages or dissolution of the contract all together. The correct remedy to remove a tenant from the property for breach of the lease is an Unlawful Detainer action.¹¹ The landlord is not allowed to physically remove the

⁶ Colonial Court Apartments, Inc. v. Kern, 163 N.W.2d 770 (Minn. 1968).

⁷ Minn. Stat. Ann. § 504B.161 (West 2007).

⁸ Minn. Stat. Ann. § 216C.27, subdivisions 1 & 3 (West 2007).

⁹ Minn. Stat. Ann. § 504B.171 (West 2007).

¹⁰ Minn. Stat. Ann. § 609.5317 (West 2007).

¹¹ See G. Evictions

tenant from the property or lock the tenant out regardless of actions taken by the tenant.¹² There are a few standard lease terms that are common problems for landlords: (i) failure or refusal of the tenant to move out at the end of the lease; (ii) failure or refusal to pay rent; (iii) and destruction of the property. Each will be discussed with common pitfalls, action by the tenant and remedies for the landlord.

The first common violation of the lease is **failure or refusal of the tenant to vacate at the expiration of the lease**. An eviction action is allowed if the tenant holds over after the termination of the right to possession stated in the lease and after a notice to quit or vacate sent by the landlord.¹³ However, a tenant holding over that has not received a notice to quit or vacate automatically converts to a month-to-month lease until given notice to vacate by the landlord. Under a month-to-month lease, 31 days must be given to a tenant before the date to vacate.

In addition to holding over after the lease, if the tenant remains in the rented property after sale of the property on an eviction or judgment, foreclosure of a mortgage and expiration of the time for redemption, or after termination of the contract to convey property the landlord is entitled to an eviction action.¹⁴ The tenant must have received one month's written notice to vacate no sooner than a month after the expiration of the time of termination and it must also state that the landlord will hold the tenant harmless for breaching the lease by vacating.¹⁵ In the event the tenant does not vacate after such time, they are unlawfully inhabiting the premises and can be ordered by the court to vacate after an Unlawful Detainer action.

The second common problem for landlords is when the tenant **fails to or refuses to pay the rent** agreed upon in the lease. The tenant has an obligation to pay rent.¹⁶ In fact, if a tenant "neglects or refuses to pay rent due on a tenancy at-will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing."¹⁷ However, a tenant can legitimately withhold rent in an instance where the landlord is breaching the covenant of habitability.¹⁸ The covenant to pay rent and the covenant of habitability are considered mutual and dependent.¹⁹ At

¹² See F. Forcible Entry and H. Landlord lockouts/ illegal evictions.

¹³ Minn. Stat. Ann. § 285, subdivision 1(3) (West 2007).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Minn. Stat. Ann. § 504B.125 (West 2007).

¹⁷ Minn. Stat. Ann. § 504B.135(b) (West 2007).

¹⁸ Minn. Stat. Ann. § 504B.161 (West 2007).

¹⁹ *Fritz v. Warthen*, 213 N.W.2d 339 (Minn. 1973); *University Community Properties, Inc. v. Norton*, 246 N.W.2d 858 (Minn. 1976).

the initial court appearance for the subsequent Unlawful Detainer action for nonpayment of rent where the tenant must defend their nonpayment, the tenant is required to bring the rent being withheld. This ensures the tenant actually has the rent to pay and is purposefully withholding it to force compliance by the landlord. There is no Right of Reentry necessary to commence an Unlawful Detainer action for nonpayment of rent.²⁰

A more defensible action is available to the tenant in such instances where they actually pay the rent into the court administrator instead of the landlord. This is called **Rent Escrow**.²¹ The process appropriate for such a measure is for the tenant to notify the landlord of the repairs or violations to the health or building code to be made in a letter. If the repairs are not completed in fourteen (14) days, the tenant can start a rent escrow account with the court administrator by providing a copy of that letter and paying a filing fee.²² The tenant must give the court administrator the name and address of the landlord and an estimate of the repair costs.²³

Once the rent escrow is filed, the court will schedule a hearing within ten (10) to fourteen (14) days to determine the validity of the Covenant of Habitability claim. The court will notify the landlord by mail, unless repairs are estimated as greater than the \$7,500 limit for conciliation court, which would require personal service.²⁴ The case will be heard by the court, which has authority to order repairs, allow the tenant to make the repairs and deduct the cost from the rent, appoint an administrator to collect rent and order the repairs, return all or party of the rent to the tenant, or order future rent paid to the court or be reduced or eliminated unless the repairs are made.²⁵ There can also be a fine levied against the landlord for bad faith actions in refusing to make repairs.

The landlord is not without recourse. He or she can file for eviction if the full amount of the rent was not deposited in the escrow. Additionally, the tenant's right to use a rent escrow can be waived by oral or written agreement. Finally, if the claims against the covenant of habitability are found to be without merit then the rent is given in full to the landlord and an action for costs or eviction could be possible.

²⁰ Minn. Stat. Ann. § 504B.291 (West 2007).

²¹ Discussed in Minn. Stat. Ann. §§ 504B.385, 504B.185, 504B.161 and 503.01 (West 2007).

²² The current filing fee for a Rent Escrow in Hennepin County is \$55, but can be waived in the case of a low-income tenant.

²³ Minn. Stat. Ann. § 504B.385, subdivision 1(c) (West 2007).

²⁴ Minn. Stat. Ann. § 504B.385, subdivision 1(c) (West 2007).

²⁵ *Id* at subd. 1.

The final common lease term breach is **destruction of property**. The landlord has several remedies if the tenant is willfully and maliciously destroying property.²⁶ The Court is authorized to award damages, costs and reasonable attorneys' fees, as well as any equitable relief determined by the court for a destruction of property action against the tenant.²⁷ If the threat is to others or their property, the landlord can request expedited temporary relief by bringing an action for harassment restraining order under Minn. Stat. § 609.748 or in conjunction with an Unlawful Detainer action.²⁸ However, if the building or leasehold premises is destroyed or becomes uninhabitable through no fault or neglect of the tenant, the tenant may vacate or surrender the building without liability.²⁹

B. Collecting Overdue Rent

Overdue rent should be collected by suit in conciliation court, unless the amount of rent due exceeds the \$7,500 limit appropriate for conciliation court. Late fees, regardless of if they are agreed to in the lease, are illegal if they do not reflect any out-of-pocket costs experienced by the landlord because of the late payment by the tenant. Also, use of an attorney to collect costs and late fees is contrary to the Fair Debt Collection Practices Act. Finally, any agreement for a reduced payment of rent overdue is acceptable to prevent eviction in a nonpayment of rent situation but it does not remove the landlord's right to file nonpayment of rent claims.

C. Tenant abandonment of the leasehold premises

In the event a tenant abandons the leasehold premises they are not technically in violation of the lease until a failure to pay the rent. The landlord must be sure that the tenant has actually abandoned the premises to avoid an action for illegal exclusion in the event the tenant was just temporary not inhabiting. When the landlord is certain the premises have been abandoned, he or she must take proper action to repossess the premises including changing the locks and inventorying any abandoned property.³⁰ After the abandonment, the landlord has no duty to mitigate damages by seeking a new tenant and can bring the abandoning tenant to court for

²⁶ Minn. Stat. Ann. § 504B.165 (West 2007).

²⁷ *Id.*

²⁸ Minn. Stat. Ann. § 504B.321 (West 2007).

²⁹ Minn. Stat. Ann. § 504B.131 (West 2007). But, must vacate within a reasonable time after uninhabitability to justify the nature of its unfitness for living. *Hoppman v. Persha*, 248 N.W. 281 (Minn. 1933).

³⁰ See D. Unclaimed tenant property.

breach of the lease and recollection of unpaid rent.³¹ Also, the tenant is not entitled to any deduction from the rent for savings of the landlord due to the abandonment.³²

A different scenario is if the tenant actually surrenders the property. Surrender usually requires a written agreement.³³ But, courts have found that leases have been surrendered based on actions of the parties even where there was no written surrender.³⁴ Simply informing the landlord of the tenant's intent to move out is insufficient to show surrender.³⁵ However, if the landlord retakes the property it may constitute an acceptance of surrender or if the landlord accepts rent for that property from a new tenant.³⁶ Unless expressly agreed otherwise, the landlord is entitled to rents accrued but not rents to become subsequently due on termination by surrender.³⁷ Also, unlike abandonment, the landlord must mitigate damages if he or she accepts surrender of the premises.³⁸

D. Unclaimed Tenant Property

When a tenant abandons, surrenders, or has been evicted they may leave behind personal property in the leasehold premises. There are options for the landlord to deal with this property but the rights remain in the former tenant. The property can be moved and stored at the tenant's expense and eventually sold or discarded.³⁹ Commonly, this is done after an eviction with the assistance of the Sheriff who will be a part of the processing of the unclaimed property.

The property can be stored in the original leasehold premises. Remaining property must be inventoried on a form provided by the Sheriff.⁴⁰ That inventory must list the tenant's items in the landlord's control and a description of their condition. The reason it is important to document the property present and its condition with the Sheriff present is that the landlord is liable for any damages to the property caused during moving or storage if reasonable care was not exercised under the circumstances.⁴¹ The form must also have the date and signature of the landlord with

³¹ *Markoe v. Naiditch and Sons*, 226 N.W.2d 289, 290 (Minn. 1975) *reh'g denied* Feb. 19, 1975.

³² *Control Data Corp. v. Metro Office Parks Co.*, 208 N.W.2d 738 (Minn. 1973) *reh'g denied* July 10, 1973.

³³ Minn. Stat. Ann. § 504B.135(a) (West 2007).

³⁴ *Sjolberg v. Hartz*, 271 N.W. 329, 330-331 (Minn. 1937) *reh'g denied* Feb. 19, 1937.

³⁵ *Markoe*, 226 N.W.2d at 290.

³⁶ *Poboiski v. Colon*, 195 N.W.2d 431, 432 (Minn. 1972); *Benasutti v. Coast-to-Coast (Cent. Organization)*, 392 N.W.2d 695, 697 (Minn. App. 1986); *Provident Mut. Life Ins. Co. v. Tachtronic Instruments, Inc.*, 394 N.W.2d 161, 164 (Minn. App. 1986).

³⁷ *Galbraith v. Wood*, 144 N.W. 945, 948 (Minn. 1914); *Newberg v. Conley*, 252 N.W. 221, 222 (Minn. 1934).

³⁸ *Provident Mut. Life Ins. Co.*, 394 N.W. 2d at 164.

³⁹ Minn. Stat. Ann. § 504B.271, subd. 1 (West 2007).

⁴⁰ Minn. Stat. Ann. § 504B.365, subd. 3 (West 2007).

⁴¹ Minn. Stat. Ann. § 504B.365 (West 2007).

the contact information of a person authorized to release the property. The name and badge number of the Sheriff or deputy present must also be provided. The Sheriff will retain a copy of the inventory list and another must be sent by First Class Mail to the last known address of the tenant. Also, a good faith effort should be made to reach the tenant by telephone.

The property can also be stored off site in a storage facility of reasonable security. Any moving should be done by a licensed and bonded moving company. The moving company will likely do the inventorying for the landlord and return a copy to the Sheriff. If the property is stored off the premises, the costs of moving and storing can be charged to the tenant.⁴² Additionally, the landlord has a lien on the property if stored offsite, but not if it is stored on the premises.⁴³

Anytime prior to 60 days after the property was abandoned, the tenant can mail a letter to the landlord requesting a date and time to retrieve their property.⁴⁴ Since the property rights are left in the tenant, landlords are prohibited from withholding ex-tenants' property in lieu of past rent, damages or other expenses. Even the costs of moving and storing the property do not need to be paid in order to get the property back.⁴⁵ In Hennepin and Ramsey Counties, the Court can order return of the property and award reasonable attorney's expenses if the landlord fails to give back the property after request.⁴⁶

Sixty (60) days after notice of or reasonably apparent abandonment, the landlord can sell or dispose of the unclaimed property.⁴⁷ Two weeks prior to the sale of the property, the landlord should make a reasonable effort to contact the tenant. The landlord should personally give written notice, or send notice by certified mail with return receipt requested to the tenant's last known address or likely living quarters if known by the landlord of the sale. The sale must also be posted in a conspicuous location at the premises.

The profits of that sale can be used to compensate the landlord for storage, back rent, damages and other debts of the tenant. After the landlord's costs are deducted any excess profits belong to the tenant if he or she writes to request them. The profits cannot be held from the

⁴² Minn. Stat. Ann. § 504B.271 (West 2007).

⁴³ Minn. Stat. Ann. § 504B.365, subd. 3 (West 2007); *Conseco Loan Finance Co. v. Boswell*, 687 N.W.2d 646, 651 (Minn. App. 2004).

⁴⁴ Minn. Stat. Ann. § 504B.271, subd. 2 (West 2007).

⁴⁵ Minn. Stat. Ann. § 504B.271 (West 2007).

⁴⁶ Minn. Stat. Ann. § 504B.365, subd. 4 (West 2007).

⁴⁷ *Id.*

tenant as leverage for other actions because the tenant has the right to that property and the profits gained.

If possession of the property is taken illegally, before the landlord could reasonably believe it was abandoned, the landlord is responsible for the costs.⁴⁸ Also, if the premises is not abandoned and the landlord does not have reasonable belief to think so, removal of the property is considered an unlawful exclusion and will be dealt with accordingly.⁴⁹

E. Landlord's right to inspect the premises

The Covenant of Quiet Enjoyment restricts the landlord from intruding on the leasehold premises without permission from the tenant's or legitimate business purpose. Therefore, the landlord has no right to enter during the term of the lease, with a few exceptions. Only a good faith effort to give the residential tenant reasonable notice under the circumstances to enter will justify entrance.⁵⁰ The right to notice prior to entry may not be waived by the tenant.

Additionally, that notice needs to be in conjunction with a reasonable business purpose. Such reasonable business purposes include showing the unit to a new renter, buyer or insurer; performing maintenance work; allowing government inspectors to enter; remedying a tenant causing a disturbance; a reasonable belief the tenant is violating the terms of the lease; prearranged housekeeping in senior housing; reasonable belief the premises is being occupied by a person who has no legal right; and if the tenant has vacated.⁵¹ Any entrance by the landlord should be attempted during reasonable hours if possible.

The landlord can inspect and enter the premises without notice if he or she reasonably expects it is necessary to prevent injury to the persons or property because of conditions relating to maintenance, security or law enforcement; to determine the tenant's safety; or in order to comply with local ordinances regarding unlawful activities.⁵² If the landlord enters without notice to the tenant or the tenant's presence at the time of entrance, a written disclosure of the entry must be left.⁵³

⁴⁸ *Conseco Loan Finance Co.*, 687 N.W.2d at 651.

⁴⁹ See H. Landlord lockouts/ illegal evictions.

⁵⁰ Minn. Stat. Ann. § 504B.211 (West 2007).

⁵¹ *Id.* at subdivision 3.

⁵² *Id.*

⁵³ *Id.* at subdivision 5.

F. Forcible Entry

The State of Minnesota does not allow “self-help” in gaining possession of a premise regardless of ownership.⁵⁴ Self-Help would involve the landlord taking the law into his or her own hands to forcibly remove the tenant from the property. While the tenant is in legal possession of the premises under the lease, no other person can occupy or take possession of the premises by force.⁵⁵ The only recourse to remove a tenant from the property is to use the legal process of Unlawful Detainer to have a court rule that the tenant is there illegally and ordered to leave. The benefit to using this process is that the tenant is removed by a law enforcement officer if they do not comply, which removes the landlord’s liability in the action.

G. Evictions

When a lease relationship turns foul either by breach of the lease or the statutory covenants the landlord has a cause for an Unlawful Detainer action. Unlawful Detainer is an expedited eviction trial process granted by statute to allow a landlord to repossess leased property in the event of a breach.⁵⁶ The action is only for possession of the premises, rent and damages are separate actions. However, questions of title and equity are still ejectment actions. An Unlawful Detainer action can be brought when a tenant or any other person has unlawfully, forcibly, or peaceably entered and detained a premises from persons entitled.⁵⁷

1. Landlord disclosure

However, there is a disclosure requirement to meet before any action can be taken against a tenant.⁵⁸ In Hennepin and Ramsey Counties, the facts of the disclosure must be pled in any action against a tenant.⁵⁹ The landlord must provide the tenants, in writing, with the name and address of the person authorized to manage the premises and the owner of the premises or authorized agent to receive notices and demands. These addresses cannot be post office boxes. The disclosure can be put in the lease, but must also be printed or typed and posted by the landlord in some clearly visible place on the premises. This disclosure must be made thirty (30)

⁵⁴ Berg v. Wiley, 264 N.W.2d 145, 150 (Minn. 1978).

⁵⁵ Minn. Stat. Ann. § 504B.281 (West 2007).

⁵⁶ Minn. Stat. Ann. §§ 504B.281-504B.371 (West 2007).

⁵⁷ Minn. Stat. Ann. § 504B.301 (West 2007). Cannot bring an eviction action if the tenant, or his ancestors, have quietly possessed the property for three (3) consecutive years after the lease has terminated. Minn. Stat. Ann. § 504B.311 (West 2007).

⁵⁸ Minn. Stat. Ann. § 504B.181 (West 2007).

⁵⁹ Rule 26.03 of the House Court Rules.

days before any action can be taken against the tenant and that action will be stayed until that requirement is met.

2. *Filing and Complaint*

To file an Unlawful Detainer claim there must be a complaint and filing fee. Currently, in Hennepin County the filing fee is \$252. The Court may require a landlord that is a corporation or similar entity to be represented by an attorney.⁶⁰ Otherwise, expedited housing actions do not require an attorney, which is an exception to the prohibition on the unauthorized practice of law. An authorized management company or agent may commence an Unlawful Detainer proceeding in its own name or on behalf of the owner instead of using an attorney.⁶¹ Also, a tenant or landlord may be represented by a person who is not a licensed attorney with the exception of appeals and jury trials.⁶²

The complaint itself must explain to the court the situation and the justification for repossession. It must state the full name and birthday of the tenant, if known, along with the factual allegations that authorize recovery.⁶³ The premises must be described accurately enough to indicate the proper court or division to hear the case. And finally, the complaint must state the legal owner of the property or other person entitled to possession.⁶⁴

After the complaint is received by the Court, it will issue a summons, which is to be served on the tenant not less than seven (7) days nor more than fourteen (14) days before the initial court appearance.⁶⁵

3. *Expedited Procedure*

If the eviction is brought for unlawful activities or on the basis of a tenant causing a nuisance, the landlord can file an affidavit with the complaint stating the specific facts of those claims to request an expedited hearing.⁶⁶ The landlord can expedite the action to get temporary relief by bringing the action with a temporary restraining order.⁶⁷ Appearance in an expedited hearing will not be less than five (5) days and not more than seven (7) days from the date the

⁶⁰ Nicollet Restoration, Inc. v. Turnham, 486 N.W.2d 753, 754 (Minn. 1992).

⁶¹ Minn. Stat. Ann. § 481.02, subdivision 2(12) (West 2007).

⁶² *Id* at subd. 2(13).

⁶³ Minn. Stat. Ann. § 504B.321, subd. 1.

⁶⁴ Rule 26.03 of the Housing Court Rules.

⁶⁵ Minn. Stat. Ann. §§ 504B.33 & 566.05 (West 2007). Service must comply with Minn. R. Civ. R. 4 (West 2007).

⁶⁶ Minn. Stat. Ann. § 504B.321, subd. 2 (West 2007).

⁶⁷ Minn. Stat. Ann. § 504B.325 (West 2007).

summons was issued.⁶⁸ The tenant should be served in an expedited action within 24 hours of issuance of the summons. If the landlord brings a request for expedited hearing and the Court find insufficient basis for it, the Court can impose a \$500 civil penalty for abuse of the process.⁶⁹

4. *Proper Service of the Summons*

The summons must be delivered on the tenant in a proper manner or the tenant will have defense of improper service that may terminate the landlords Unlawful Detainer claim. Service should be performed by the Sheriff's Department or an independent process server. The landlord, an agent of, or anyone affiliated with the landlord cannot deliver the summons.⁷⁰ Delivery of the summons can be to the tenant, or if he or she cannot be found, to the tenant's residence and given to a person who lives there of suitable age and discretion.⁷¹ No minimum age has been set from suitability but 14 is widely used as an appropriate age for service.⁷² Also, the service cannot be performed on a Sunday or legal holiday.⁷³ When the summons is delivered on the tenant, an affidavit of service should be filed with the court.

If the tenant cannot be found in the county, the "Mail and Nail" procedure can be used. This often confused procedure, done right can alleviate a large technicality that could compromise the landlord's eviction of a problem tenant. The personal service should be attempted two times, as outlined above. One of those attempts should be made between the hours of 6 pm and 10pm. If the person cannot be served, an Affidavit of Not Found should be filed with the Court. The next step will be to mail a copy of the summons and complaint to the tenant and, also, filing an Affidavit of Mailing. Finally, the summons and complaint can be posted on the leasehold premises in a conspicuous place for not less than one week. Upon completion of this step an Affidavit of Posting should be filed with the Court.⁷⁴

5. *Initial Appearance*

As mentioned previous, the initial appearance must be within seven (7) to fourteen (14) days after issuance of the summons.⁷⁵ The Court is authorized to grant a continuance of the

⁶⁸ Minn. Stat. Ann. § 504B.321, subd. 2(c) (West 2007).

⁶⁹ Minn. Stat. Ann. § 504B.321, subd. 2 (West 2007).

⁷⁰ Minn. R. Civ. P. 4.02 (West 2007).

⁷¹ Minn. Stat. Ann. § 504B.331 (West 2007).

⁷² However, a child 13 years of age was deemed appropriate in one decision. *Holmen v. Miller*, 206 N.W.2d 916, 919-920 (Minn. 1973).

⁷³ Minn. Stat. Ann. § 624.04 (West 2007); Minn. Stat. Ann. § 645.44 (West 2007).

⁷⁴ Minn. Stat. Ann. § 504B.331 (West 2007).

⁷⁵ Minn. Stat. Ann. § 504B.321 (West 2007).

proceedings for up to six (6) days without consent of the parties. If the opposing side does consent, the continuance can be made for longer than six (6) days.⁷⁶ Additionally, a continuance of up to three (3) months can be granted if a material witness is unavailable and the bond is paid.⁷⁷

When the hearing is scheduled, the tenant must bring all rent owed plus late fees and landlord's filing fee. The tenant can request up to seven (7) days after the hearing to pay those costs. Rent and costs are held by the Clerk of the Court until the judge makes a final ruling. The court can also require posting of rent or other security as a precondition to the trial or for raising a defense.

6. *Trial*

The parties in an Unlawful Detainer action are entitled to a full trial and may request a jury trial.⁷⁸ Some courts use the initial appearances as the trial, while others use it as an arraignment. All the hearings related to residential rental housing are consolidated to insure continuity and consistency.⁷⁹

The process of the trial will vary by jurisdiction. The Housing Courts of Hennepin and Ramsey Counties appoint an impartial referee to hold hearings and make recommendations regarding the findings and decisions in the case. The referee's findings are then reviewed by a District Court Judge to confirm them as the findings and orders of the Court. Either party can request a review of the referee's findings and orders within ten (10) days.⁸⁰ The party requesting appeal must file and serve a notice of the recommended order or finding to the court and the opposing parties. That notice must explain the requesting reasons for review, and state the specific parts of the recommended findings or orders that are disputed.

7. *Stay and Pay*

In an action for nonpayment of rent, prior to possession being given to the landlord, the tenant can pay the outstanding rent, court costs and attorney's fees not to exceed \$5 to be able to retake possession of the property.⁸¹ The Court has the power to stay the restitution of the

⁷⁶ Minn. Stat. Ann. § 504B.341(a) (West 2007).

⁷⁷ Minn. Stat. Ann. § 504B.341(b) (West 2007).

⁷⁸ Minn. Stat. Ann. § 504B.335(b) (West 2007); *Gutsch v. Hyatt Legal Services*, 403 N.W.2d 314 (Minn. App. 1987).

⁷⁹ Laws 1993 Ch. 317 §17, subd. 1.

⁸⁰ Rule 26.10 of Housing Court Rules.

⁸¹ Minn. Stat. Ann. § 504B.291, subd. 1(a) (West 2007).

premises if the tenant pays the outstanding rent within a set time. If the tenant can pay the outstanding rent but not the court costs and fees, the Court can stay the restitution and give the tenant time to do so.⁸² A lesser amount of rent can be agreed to by the parties to maintain tenancy in writing, but it does not remove a claim by the landlord to recover possession for nonpayment of rent.⁸³ If the eviction action was not for nonpayment of rent, but for another failure of performance, the statute implies that performance of that wanting provision will be an equivalent to a stay and pay action.⁸⁴

8. *Appeal*

The decision of the District Court can be appealed within ten (10) days of the entry of judgment.⁸⁵ To file an appeal, a bond to cover payment of all costs and disbursements awarded against the appellant is required.⁸⁶ This allows the tenant to remain in possession of the premises, staying execution of the repossession by the landlord, if the tenant pays all rents and other damages during the appeal.⁸⁷ Alternatively, the tenant could request a Writ of Prohibition in some circumstances.⁸⁸ In this action, the higher court will prevent the inferior court from exercising jurisdiction over the case and order the tenant to vacate. This will only work if there is some reason the lower court does not have the express authority to hear the case.

9. *Defenses to an Eviction Action for a Tenant.*

There are various technical and legal defenses a tenant has in an Unlawful Detainer action of which a landlord should be aware. These defenses range from neglect to follow the rules of the court meant to protect the tenant's rights to willful discriminatory actions by the landlord. Many of the defenses will be prevented if the proper procedures for an Unlawful Detainer action outlined here are followed.

The first defense a tenant can bring against an Unlawful Detainer action is **never receiving a copy of the lease agreement**. The defense is that the tenant was unaware of the lease provision he or she is accused of breaching. This cannot be a defense for nonpayment of rent, disturbing the peace, malicious destruction of the premises or breach of the illegal drug

⁸² *Id* at subd. 1(b).

⁸³ *Id* at subd. 1(c).

⁸⁴ Minn. Stat. Ann. § 504B.291, subd. 1 (West 2007).

⁸⁵ Minn. Stat. Ann. § 566.12 (West 2007).

⁸⁶ Minn. R. Civ. App. P. 107, subd. 1 (West 2007).

⁸⁷ Minn. Stat. Ann. § 504B.371 (West 2007). Generally, the Court will allow indigent tenants to remain in possession as long as rent is paid.

covenant. The landlord has two forms of recourse if such a defense is raised. The landlord can have the tenant sign a receipt to certify he or she received a copy at the outset of the lease. This becomes compelling evidence that the tenant was aware of the lease terms they are accused of breaching.⁸⁹ In the absence of a signed receipt, the landlord can produce the same result by proving that the tenant has actual knowledge of the terms upon which the breach action is brought.

Another defense to an Unlawful Detainer action is **Improper Service of Process**. This essentially means they were not informed of the action in a way accepted by the rules of the court. Such improper service is any way that the proper procedures, outlined in the section on service, were not followed. These could include not receiving the court papers at least 7 days before the hearing, the summons not being handed to someone of suitable age or an incorrect Mail and Nail procedure. Another way that service can be improper, not previously mentioned, is if the person bringing the action on behalf of the landlord does not have a correct Power of Authority filed with the Court.⁹⁰

If the landlord is **doing business under an assumed name** it must be filed with the Secretary of State.⁹¹ The eviction action is stayed until the filing of the assumed name is completed. In the event this occurs, the tenant is entitled to \$250.00 by statute regardless of who prevails in the action.⁹²

As mentioned earlier, **no Right of Reentry** provided in the lease prevents an eviction action for lease term violations. There can still be implied reentry under some statutory covenants like nonpayment of rent and illegal activity on the premises.

There is a defense to an Unlawful Detainer action if the tenant did not receive **notice to quit or vacate within the proper time** outlined in the lease. Many leases provide a set amount of time each party must give in the event they intend to retire their obligations under the agreement. Under a month-to-month lease, 31 days is the proper amount of notice to quit or vacate. If the tenant is not given the amount of time provided for in the lease or 31 days in an at-will lease it is a defense to the action.

⁸⁸ Minn. R. Civ. App. P. 120-121 (West 2007).

⁸⁹ Minn. Stat. Ann. § 504B.111, subd. 2 (West 2007).

⁹⁰ Minn. Gen. R. Prac. 603 (West 2007).

⁹¹ Minn. Stat. Ann. § 333.01 (West 2007).

⁹² Minn. Stat. Ann. § 333.06 (West 2007).

If the eviction action is for breach of a lease term, **accepting rent** after the landlord becomes aware of the breach will waive his or her right to bring action for breaching that provision.⁹³ Similarly, if rent is accepted after a notice to quit, it waives the notice to quit. Also, accepting partial payment of rent waives the right to possession for nonpayment of rent.⁹⁴ However, non-waiver clauses in leases have been ruled valid and sufficient to remove defenses of this kind.⁹⁵

If there is **no violation** of a statutory covenant or lease provision there can be not eviction action. There must be a written or oral lease to have a violation under that lease. Additionally, the violation has been found in some cases to have to be material to the lease to bring an eviction action.⁹⁶ Also, the tenant must be responsible for the violation. With that in mind a tenant is responsible for violations of his or her children or guests. Finally, there can be a separate defense if the complaint was insufficient to explain to the tenant what term of the lease or covenant they are accused of violating.

Breach by the landlord of the **Covenant of Habitability** is a defense to many reasons a landlord would bring an Unlawful Detainer action.⁹⁷

Any Unlawful Detainer action that is brought within ninety (90) days of the tenant exercising their lease rights or reporting a violation to a government in good faith is a defense because it is considered **retaliation**.⁹⁸ At the hearing, there will be a presumption that the action is retaliatory if brought within 90 days and the landlord will have the burden of proving otherwise. However, if the action is brought after 90 days, it is the burden of the tenant to prove that the action is retaliatory. Increasing rent after a good faith action by the tenant is also grounds for a defense if the action is based on contested rent.⁹⁹

If an Unlawful Detainer is brought against a protected class and it can be shown that that class was being discriminated against by the landlord it can be a defense.¹⁰⁰ Familial status can

⁹³ Minn. Stat. Ann. § 504B.291, subd. 1(c) (West 2007); *Priordale Mall Investors v. Farmington*, 411 N.W.2d 582 (Minn. App. 1987).

⁹⁴ Minn. Stat. Ann. § 504B.291 (West 2007).

⁹⁵ *Minneapolis Community Development Agency v. Powell*, 352 N.W.2d 532, 534 (Minn. App. 1984).

⁹⁶ *Cloverdale Foods of Minnesota, Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. App. 1998).

⁹⁷ *Fritz*, 213 N.W.2d at 341.

⁹⁸ Minn. Stat. Ann. § 504B.285, subd. 2 (West 2007).

⁹⁹ *Id* at subd. 3.

¹⁰⁰ *Barnes v. Weis Management Co.*, 347 N.W.2d 519, 521 (Minn. App. 1984); *Ellis v. Minneapolis Comm'n on Civil Rights*, 319 N.W.2d 702, 704 (Minn. 1982). Can also be brought under the prohibition of retaliatory actions of Minn. Stat. Ann. § 504B.285, subd. 2 (West 2007).

also not be used to force an eviction action. This comes into play if the lease has some provisions over the type of people or families can reside at the property. One year must have passed from the recognition of the familial status in question for the action to be taken and the tenant must be given six (6) months for the notice to quit.¹⁰¹ However, if the tenant brings a discrimination defense and loses, they may be barred from bring their claim to the Department of Human Rights.¹⁰²

10. Execution of Writ of Restitution

A Writ of Restitution gives the landlord the authority to retake possession of the leasehold property from the evicted tenant. If the court finds for the landlord, judgment is immediately entered and the Court issues a Writ of Restitution for recovery of the premises. It also taxes the costs of the action against the tenant and produces an order to vacate.¹⁰³ That Writ and Order are to be carried out by the Sheriff or other law enforcement officer within 24 hours. An eviction goes on the tenant's record and tenant screening companies are allowed to report it for seven (7) years.

If the Court finds for the tenant, the judgment is entered to return the tenant to possession and the costs are taxed against the landlord.¹⁰⁴

H. Landlord lockouts/ illegal evictions

The intentional ouster or interruption of utilities is a misdemeanor.¹⁰⁵ The lockout of a tenant without the right to do so as a result of an Unlawful Detainer action is considered an illegal eviction. Other things that result in an illegal eviction are changing the locks, discontinuing utilities, removing doors or windows and other similar acts. If the tenant has not abandoned or surrendered the premises these actions would violate the tenant's right to possession and quiet enjoyment of the leasehold property.

¹⁰¹ Minn. Stat. Ann. § 504B.315. This does not apply to actions for nonpayment, damage to the premises, disturbance of other tenants or other breach of the lease.

¹⁰² *Ellis*, 319 N.W.2d at 704.

¹⁰³ Minn. Stat. Ann. § 504B.345(a) (West 2007).

¹⁰⁴ Minn. Stat. Ann. § 504B.345(c) (West 2007).

¹⁰⁵ Minn. Stat. Ann. § 504B.225 (West 2007).

In the event of an illegal eviction, the tenant can petition the court to regain entry or remedy any other means of the unlawful exclusion.¹⁰⁶ That petition must give a description of the rental unit, the name of the owner of the property, the facts that make the lockout unlawful and a request to return the tenant to possession. A trial will be held to determine the validity of the petition with a presumption that the lockout action was done in an effort to unlawfully remove the tenant. The landlord has the burden to convince the Court that presumption is inaccurate. If the Judge deems the lockout unlawful, he or she can order possession to the tenant and triple damages or \$500.00, whichever is greater, along with reasonable attorneys' fees.¹⁰⁷ Only actual damages are available if the tenant has not given notice of an interruption to the utilities or other lockout measure, the landlord made an effort to reinstate service, or the interruption was for repairs.¹⁰⁸

I. Enforcing awards and judgments

Once a court has ruled in favor of the landlord on the Unlawful Detainer action, the landlord is given legal possession of the property. The tenant can request up to seven (7) days to move out if they can prove to the court that immediate expulsion from the premises would cause hardship. This is called a Stay of Writ. Such common hardships could pertain to children, the elderly or a disability. However, no stay will be allowed if the reason for eviction involves drugs, nuisance, or endangerment of other residents, their property or the landlord's property.¹⁰⁹ Regardless of any stays, a Writ is good for thirty (30) days after issuance.

In the absence of a Stay of Writ, the landlord should bring the Writ of Recovery and Order to Vacate produced by the court to the Sheriff's Civil Unit¹¹⁰ with a \$100 deposit. The Writ will be served on the tenant the following day. The name of the tenant to vacate will be listed on the Writ. The Order to Vacate will apply to the listed tenant's family but not any other tenant not listed or related.¹¹¹ After being served with the writ or it being posted, the tenant has 24 hours to vacate the premises.¹¹² If the tenant is not found in the county and the premises is

¹⁰⁶ Minn. Stat. Ann. § 504B.375 (West 2007).

¹⁰⁷ Minn. Stat. Ann. § 504B.221 (West 2007).

¹⁰⁸ *Id.*

¹⁰⁹ Minn. Stat. Ann. § 504B.345 (West 2007).

¹¹⁰ For Hennepin County: City Hall Room 30 between the hours 8 am and 4:30 pm.

¹¹¹ Minn. Stat. Ann. § 504B.365, subdivision 1(a).

¹¹² *Id.*

vacant, the Sheriff's Department will enter, by force if necessary, to give possession back to the landlord.

If the tenant is found in the county and served with the Writ but does not leave within the allotted 24 hours, the landlord should call the Sheriff's Civil Unit to schedule an eviction.¹¹³ The tenant's failure to comply will lead to the Sheriff bringing the "force of the county" to remove the tenant from possession and install the Landlord in the premises.¹¹⁴ The landlord, or a representative, must be present for the Sheriff to carry out the eviction. Also, the landlord must plan for the handling of the tenant's abandoned property either by removal or storage on the premises.¹¹⁵ Upon completion of the eviction, the locks of the premises must be changed and the Sheriff will post 'No Trespassing' signs. If the, now, ex-tenant returns to the property without permission, it will be unlawful. In the event this occurs, the tenant should be asked to leave and if they refuse the police can be called to remove them from the premises.

¹¹³ *Id* at subd. 1(b).

¹¹⁴ *Id.*

¹¹⁵ Minn. Stat. Ann. § 504B.365, subd. 3. See Unclaimed Tenant Property for more information.