



# Evictions

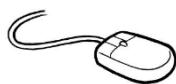
## Are you facing eviction?

If you are at risk of eviction, try to get help right away. If your landlord already filed for eviction, the court sends papers. The court papers for an eviction are called a Summons and Complaint. If you get a Summons and Complaint for an eviction, this fact sheet talks about some things you need to know.

- 1. Get legal advice right away.** If you have a low income, call your legal aid office. You can find more resources, legal aid offices and other help online at: [www.LawHelpMN.org](http://www.LawHelpMN.org). You don't need a lawyer to fight an eviction, but having one helps. You should know the law and your rights.
- 2. Be on time for the hearing.** Don't be late or you will lose by default. Go to the hearing even if you have no defense so that you can ask the court for up to 7 days to move if you have a hardship.

**Go to the hearing even if your landlord says you don't need to!**

- 3. Optional: Fill out an Answer form.** In some counties, it can help to fill out a court form called an "Answer." Call your [legal aid office](#) to find out if you should file a written answer in your county. You can get an answer form at your courthouse or online. For an [Answer form](#) online, go to [www.mncourts.gov](http://www.mncourts.gov).



- Click on "Get Forms"
- Click on "Housing / Landlord-Tenant"
- Click on "Eviction Answer" (choose the statewide form or Hennepin County form)



Bring 3 copies of your Answer to court. Give 1 copy to your landlord, 1 copy to the judge and keep 1 copy for yourself.

- 4. If you owe rent money,** bring **all** the money to court, **plus** any late fees that you owe, the landlord's filing fee and the service fee. The filing fee ranges from about \$280 to \$300 depending on your county. The service fee can range from \$30 to a lot more- but it must be

reasonable. The court might give you up to 7 days after the hearing to pay the fees, but you have to ask. You may need to have all the rent money with you when you go to court.

5. **If you withheld rent because of repair problems,** you might have to pay **all** of the rent money into court. The court clerk holds it until the judge makes a decision. If you deposit rent with the court clerk, it must be in cash or certified check made out to "District Court Administrator." You should not need the filing fees or late fees. Ask the court to order repairs and give you some of your rent money back for the time you lived there with the problems.
6. **Try to settle the case.** See if you can work out a deal with your landlord. If you owe rent, try to set up a payment plan. If you make a deal, put it in writing. Make sure you and your landlord sign it. Bring it to court on the hearing date. Ask the court to approve it. Do not skip court, even if you have made a deal. The landlord can still show up, and if you are not there, the judge might order the eviction. You should also try to get the case record expunged (erased) as part of the settlement.
7. **If the court orders mediation, be ready for it.** In some courts there are mediators who try to help you and your landlord settle the case. If you make an agreement, it is written out for you and the landlord to sign. The agreement becomes part of the judge's order and can be enforced against you. Think about what you might want to happen in your case before you go to court so you are ready in case of mediation. Do not agree to anything that you can't or won't do. You can't change your mind about the agreement after court. If you don't follow the agreement, you can be evicted.
8. **Evictions usually stay on your record.** Eviction cases are public records. Tenant screening companies can report evictions for 7 years or more. If you lose an eviction case, it is very hard to get it expunged (erased). For more information on expungements see our fact sheet [Expunging an Eviction Case](#).
9. **Ask the court to expunge the case from your record.** Expunge means to erase the public record of a case. In order to get an expungement, the court must find that:
  - the landlord's case is "sufficiently without basis in fact or law,"
  - expungement is "clearly in the interests of justice," and
  - the "interests of justice" are not outweighed by "the public's interest in knowing the record."



The court can expunge your eviction only if the judge thinks the landlord was wrong to file the case and it would be unfair to leave it on your record. Examples might be:

- the court papers were not given to you correctly
- the landlord said you had not paid the rent, but you proved that you had
- the landlord was getting back at you (retaliating) for complaining about repairs
- the landlord said you broke the lease, but you proved that you did not
- you were a tenant in a foreclosed property but did not get a timely notice to move.

See our Fact Sheet [When Your Landlord Loses the Building](#).

**Expungement is an important thing to include in your settlement agreement.** A lot of times a landlord will agree to an expungement if you do everything you say you will do in a settlement agreement – like move out or make all your payments on time.

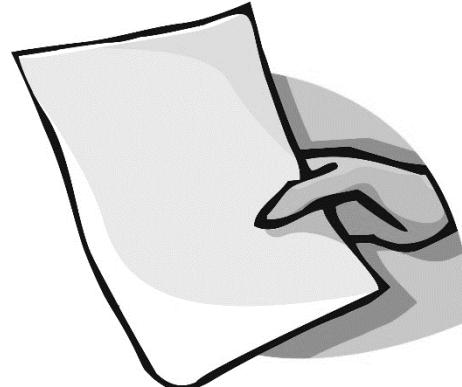
## Common Eviction Defenses

### What is a “defense”?

You can see what the landlord’s case is about by looking in the Complaint. Eviction defenses are reasons to dismiss the case. You can tell the court your defenses by telling the judge or by filling out an Answer form. Check off the reasons that apply to your situation. Some common defenses are listed below.

### Getting the Court Papers (Service)

- Minnesota law says your landlord has to give you the court papers in a specific way. If the landlord doesn’t give them to you in the right way, you can ask for the case to be dismissed and expunged (erased).
- Your landlord must file a paper with the court that says how they gave you the court papers. This paper is called an affidavit of service. You don’t get a copy of the affidavit of service. You should ask the court clerk to show it to you.
- The landlord must follow these steps to give you the court documents: First, they have to try to give the court papers to you in person. They have to try at least twice on 2 different days. One try has to be between 6 PM and 10 PM. It’s ok for the landlord to give the papers to someone who lives at your home, but that person has to be old enough to understand them. If the papers are delivered this way, “Service” is done.



But if the landlord can't find you or can't deliver the papers, then they have to go through more steps. The landlord has to do all of these things:

1. The landlord has to file a paper with the court called "affidavit of not found."
  2. The landlord has to mail the court papers to you at your last known address.
  3. After they mail them, they have to file an "affidavit of mailing" with the court that says they mailed the court papers to you.
  4. Then the landlord has to go to the address and post the court papers on the door.
  5. The landlord has to then file an "affidavit of posting" with the court.
- You must get the court papers at least 7 days before the court hearing.

If your landlord did not follow any of these rules of service, you can ask for the case to be dismissed and expunged.

### Rent and Fees (Nonpayment of Rent)

- You may disagree about how much rent is owed. You have to prove the amount. If you have any receipts, bring them to court.
- If you have repair problems, ask the court to lower the rent. Bring proof of the problems, inspector reports, photos, witnesses. Bring proof that the landlord knew about the problems. Remember that most judges will not listen to this defense unless you bring **all** the rent money to court.
- You may disagree with fees the landlord is charging. Check your lease to see what fees are listed. Unfair high fees for late rent are not legal, even if they are written in your lease. Late fees are capped at 8% of your unpaid rent for that month.
- If your landlord took part of the rent money you owed, they may have waived (given up) the right to evict you for not paying rent. But your lease might say it is ok for the landlord to take partial rent and still evict you. Check your lease!
- Sometimes the court gives you more time to pay the rent or fees. Ask for 7 days and explain why you need the time.



### Move Out Notice ("Holding Over" After Notice to Vacate)

If you have not broken your lease and your rent is paid up, the landlord has to send you a proper written move-out notice. If the notice was not given to you in writing in the proper time period, that is a defense.

- If you have a lease, it says how much time is "proper notice." Check it and bring it to court.

- Even if you don't have a written lease, the landlord has to give you written notice at least a month and a day before the move out date. For example, if the landlord wants you out by June 30<sup>th</sup>, you must get the written notice on or before May 31<sup>st</sup>. Bring the notice to court.
- A landlord can't give you a move out notice if it's retaliatory. That means trying to get back at you for something. For example, if the landlord gives you a move out notice within 90 days after you called the housing inspector about repairs, it is presumed that the notice was retaliatory.
- If the landlord accepts or demands rent after the date you are supposed to move out, they may have waived the right to evict you for holding over.

### Lease Violations (Breach of Lease)

- If the landlord says you violated the lease, they have to prove that you have an oral or written lease, that you violated the lease, and that the violation of the lease was "material" (important).
- If the landlord knew about the lease violation but took rent from you after it happened, they may have waived (given up) the right to evict you for that violation. Check your lease.
- A landlord can't try to evict you if it's retaliatory, even in a breach of lease case. That means trying to get back at you for something. For example, if the landlord files an eviction case after you called the housing inspector about repairs, you could argue it was retaliation.
- If someone outside of your control caused the violation, explain why you aren't responsible. But remember, you are usually responsible for what your children and guests do.
- If you have a disability that played a part in a lease violation, explain how your disability is connected to the violation. Ask the judge to order the landlord to make a "reasonable accommodation" of your disability and dismiss the case.
- If your lease violations are because of **domestic violence, stalking, dating violence, or sexual assault** you may be able to avoid eviction.
  - **If you live in subsidized rental housing**, call your local legal services office right away! See our fact sheet [Subsidized Housing Rights for Victims of Domestic Violence and Sexual Assault](#).
  - **If you don't live in subsidized housing**, your landlord can't legally evict you if the violations are because of the abuse. But, if the Complaint from the landlord also lists violations that did not happen because of domestic or sexual violence the case can continue, but only about the other lease violations. See our fact sheet [Victims of Domestic Violence, Harassment or Criminal Sexual Conduct: Your Rights in Breaking Your Lease](#).



## If You Lose in Court



- **If you think the court made a mistake,** you have 15 days to file an appeal. If a referee made the decision, you also have the right to have it reviewed by a judge, but you must act quickly. Ask the court clerk for the forms. Get legal advice right away.
- **You can ask the court for up to 7 days to move out.** Tell the court why you need 7 days. Tell them if children, senior citizens or persons with disabilities live in the home. You must ask for the time to get it.
- **The landlord gets a court order called a Writ.** The landlord has to have a sheriff or police officer deliver it to you or post it on your door. The Writ gives you 24 hours to move out. If you do not leave, the landlord will set a move-out day and time with the sheriff. The sheriff has to be there to supervise if your things are packed up and put in off-site storage by the landlord. Your property can be stored on-site or at a storage place off-site.

See our fact sheet [Getting Property Back After You Move Out.](#)

**Fact Sheets are legal information NOT legal advice. See a lawyer for advice.**

*Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.*

© 2023 Minnesota Legal Services Coalition. This document may be reproduced and used for non-commercial personal and educational purposes only. All other rights reserved. This notice must remain on all copies.  
Reproduction, distribution, and use for commercial purposes are strictly prohibited.