

HOUSING 101

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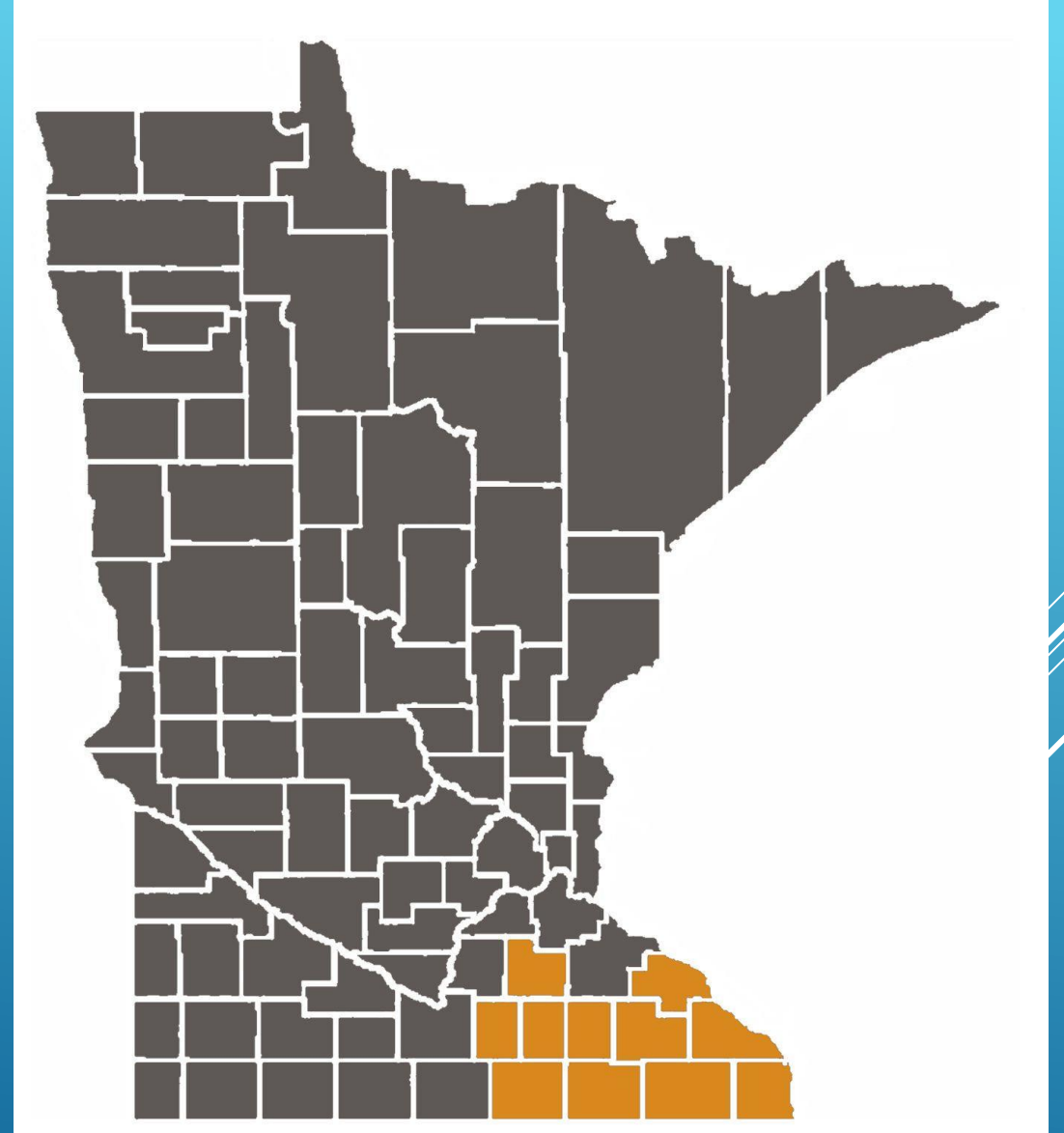
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SOUTHERN MN REGIONAL LEGAL SERVICES, INC. (SMRLS)

- SMRLS serves 33 counties in Southern Minnesota
- Three regions: Metro (St. Paul), Southwest, and Southeast, plus Fargo (AWP)
- Southeast (my region) serves 11 counties: Dodge, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted (not Olmstead), Rice, Steele, Wabasha, Winona

THIRD JUDICIAL DISTRICT

- Dodge
- Fillmore
- Freeborn
- Houston
- Mower
- Olmsted
- Rice
- Steele
- Wabasha
- Waseca
- Winona





MID-MINNESOTA LEGAL AID

EVICTION DEFENSE RESOURCES

1. *Minnesota Statute Chapter 504B (see also 327C)*

2. *Housing Law in Minnesota by Larry McDonough*

<http://povertylaw.homestead.com/HousingLawinMinnesota.html>

3. *MN Housing Law Listserv (Legal Services State Support)*

4. *National Housing Law Project – Green Book*

<https://www.nhlp.org/products/green-book/>

EVICTON DEFENSE

1. **Non-Subsidized Housing**
2. Subsidized Housing
3. Manufactured (Mobile) Home Park Issues

Note: type of housing primarily impacts pre-eviction (before filing in court). Once case gets to court, process is the same (except tenant may have additional defenses if lives in subsidized housing or manufacture home park)

EVICTION DEFENSE - PROCESS

Eviction Process

1. Landlord files Complaint, gets Summons from Court
 - a. Ordinary Procedure - by statute*, Court gives landlord a hearing date that is “not less than seven nor more than 14 days from the day of issuing the summons” Minn. Stat. 504B.321, subd. 1(c)
 - b. Expedited Procedure (Minn. Stat. 504B.321, subd 2)

Eviction action brought under Minn. Stat. 504B.171 ... or “other illegal behavior that seriously endangers the safety of other residents, their property, or the landlord’s property”

Hearing between 5 and 7 days from issuance of summons*

*Courts have “inherent authority” to “control the performance of judicial functions.” *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981).

EVICTION DEFENSE - PROCESS

Eviction Process cont.

2. Landlord arranges for service of the **Summons and Complaint** (504B.321, subd. 1(e)) on tenant
 - a. Summons must be served at least seven days before court hearing (i.e., first appearance) (504B.331 (a))
 - b. Personal Service = delivering a copy to the individual personally or leaving a copy at individual's "usual place of abode with some person of suitable age and discretion residing therein" Minn R. Civ. P. 4.03
 - c. Posting and Mailing (504B.331 (d)) – only if tenant cannot be found in the county and personal service has failed twice

EVICTIION DEFENSE - PROCESS

Eviction Process cont.

3. “First Appearance”
 - a) not less than seven nor more than 14 days from the day of issuing the summons” Minn. Stat. 504B.321, subd. 1(c)
 - b) at least seven days after service of Summons/Complaint (504B.331(a))
4. Trial within 6 days of First Appearance* (504B.341(a))
 - a) Can be continued up to three months if needed to “procure the attendance” of a material witness (504B.331(b))
 - b) Either party may demand a Jury Trial (504B.335(b))

*Courts have “inherent authority” to “control the performance of judicial functions.” *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981).

EVICTION DEFENSE - PROCESS

A note about Jury Trials and Racial Justice

In 2020 and 2021, the Minnesota Judicial Branch Equal Justice Committee studied the demographics of juries throughout Minnesota and determined that White (non-Hispanic) Minnesotans are overrepresented in the jury pool and most other racial groups are underrepresented, when compared to census estimates. **The disparity is particularly gross in Greater Minnesota.** See Committee for Equality and Justice Study on Jury Race Data and Recommendations, available at:

https://www.mncourts.gov/mncourtsgov/media/scao_library/CEJ/2020-2021-CEJ-Study-on-Jury-Race-Data-and-Recommendations.pdf

This raises serious concerns for our clients who want to exercise their statutory right to a jury trial, but are justifiably discouraged from doing so because the makeup of the jury pool (and subsequently sworn jury) will not represent a fair cross-section of the population.

Is it possible to raise this systemic issue through a legal challenge during the jury selection process in an eviction trial?

EVICTION DEFENSE - PROCESS

Eviction Process cont.

5. Rent posting? **serious constitutional concerns***
 - a) *Fritz* Defense (nonpayment due to violations of landlord covenant of habitability) *Fritz v. Warthen*, 213 N.W.2d 339
 - b) Combining allegations (lease violation *and* nonpayment) – tenant not required to post rent and court must decide lease violation claims first (504B.285, Subd. 5)
6. Trial (summary proceeding)
 - a) MN Rules of Evidence should apply
 - b) Generally, no/limited opportunity for discovery

*See “The *Fritz* defense revisited” available at:
<https://www.hjcmn.org/2021/09/08/fixing-a-hole-the-fritz-defense-revisited/>

EVICTIONS - GROUNDS

Common Grounds for Eviction

1. Nonpayment of rent
2. Material Breach of Lease
3. Holding over
 - a) remaining after expiration of lease term (i.e. one year, no automatic renewal)
 - b) Remaining after notice to quit (or nonrenewal notice)

EVICTION DEFENSE – LEGAL DEFENSES

Common Eviction Defenses

1. Tenant disputes issue of fact (e.g., I didn't do what the landlord says I did) – good issues for jury trial
2. Improper Service - See *Koski v. Johnson*, 837 N.W.2d 739 (Minn. App. 2013) (strict compliance required)
3. Precondition of Suit
 - a. Failure to comply with Minn. Stat. 504B.181 (at least thirty days prior to eviction filing, landlord must provide name and address of: (1) person authorized to manage the premises and (2) landlord or agent authorized to accept service of process)
 - b. Not active corporation
 - c. “Improper” notice to quit

EVICTION DEFENSE – LEGAL DEFENSES

Common Eviction Defenses - Nonpayment

1. Tenant paid amount alleged
2. Withholding rent allowed (*Fritz* defense)
3. No rental license
4. Illegal utility billing
5. Improper late fees (or other illegal fees)
6. Rent increase is a penalty (504B.285 Subd. 3)
7. Partial payment (waiver) see 504B.291, Subd 1(c)

EVICTION DEFENSE – LEGAL DEFENSES

Common Eviction Defenses - Nonpayment

Under Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article V, § 4, “**the filing of an eviction action or proceeding with an eviction action based on nonpayment of rent** against a tenant with a pending application for assistance through an emergency rental assistance program authorized under the federal Consolidated Appropriations Act, 2021, Public Law 116-260, or the federal American Rescue Plan Act, 2021, Public Law 117-2, **is prohibited**. If the tenant reasonably has access to the information, the tenant must provide the landlord or court with proof of a pending application and reason for a delay, if any, in processing the tenant's application. This section expires June 1, 2022.” (emphasis added)

Note: “Pending application” includes appeal of a denial

EVICTIION DEFENSE – LEGAL DEFENSES

Common Eviction Defenses - Holdover

1. Improper termination notice under the lease
2. Improper notice under 504B.135 (tenant at will)
3. Improper notice under state or federal law
4. Different notice requirements if landlord had a contract for deed cancelled or mortgage foreclosed
5. Retaliation
6. Waiver/estoppel
7. Discrimination

EVICTION DEFENSE – LEGAL DEFENSES

Common Eviction Defenses – Breach (good issues for jury trial)

1. No Breach (e.g., I didn't do what the landlord says I did)
2. Breach not material See *Cloverdale Foods*, 580 N.W.2d 46
3. No written lease (landlord has to present lease at trial)
4. Waiver/estoppel
5. Discrimination
6. Failure to accommodate tenant's disability
7. Tenant is a victim of crime (see 504B.285, Subd. 1 (b))

EVICTION DEFENSE – PROCESS

What happens if tenant loses trial? APPEAL

1. Redemption (“pay and stay”) (nonpayment only)
 - a) Statute suggests backrent has to be paid in 7 days. 504B.285
 - b) **BUT SEE** *614 Co. v. D.H. Overmayer*, 297 Minn. 395, 398 (1973) (affirmed 30 day extension to pay rent)
2. Landlord requests Writ of Recovery
 - a) Tenant can request a seven day stay of Writ (504B.345)
 - b) MHP tenant can request Conditional Writ (327C.11, Subd. 4)
3. Court issues Writ
4. Landlord has law enforcement serve Writ (24 hours)
5. Personal property handled separately (504B.365, Subd. 3)

EVICTION DEFENSE – EXPUNGEMENTS

Eviction record expungement

1. Inherent authority
2. Statutory authority Minn.Stat. § 504B.345, Subd. 1(c)(2)
3. Special rules for foreclosure and k4d cancellation

Factors court may consider:

1. Whether any back-rent is owed;
2. Tenant's eviction history (length of time since last eviction, if any);
3. The cause for non-payment of rent (willful refusal?);
4. Whether the eviction was for material breach (e.g. illegal activity)

See *At Home Apartments, LLC v. D.B.*, No. A18-0512, 2019 WL 178509, at *2

SUBSIDIZED HOUSING

Deep Subsidy Programs (tenant's share of rent is 30% of tenant income – remainder is subsidized by government)

Housing and Urban Development (HUD)

1. Public Housing
2. Housing Choice (Section 8) Voucher Program
3. Project-based Section 8 Housing
4. Section 202 Supportive Housing for Elderly

United States Department of Agriculture (USDA)

1. Rural Development Housing (Section 515)
2. Rural Development Voucher*

SUBSIDIZED HOUSING

Deep Subsidy Programs continued...

Generally, subsidized housing lease and/or voucher can only be terminated for cause (no non-renewal without cause)

Examples:

1. Serious or repeated violation of material terms of the lease, including nonpayment of rent
2. Drug-related criminal activity that occurs on or off the premises
3. Criminal activity that threatens health, safety or right to peaceful enjoyment of other residents or staff
4. Other good cause as provided in the lease

See, e.g., 42 U.S.C. 1437d(l); 24 C.F.R. 966.4(l)

SUBSIDIZED HOUSING

Deep Subsidy Programs continued...

Housing and Urban Development (HUD) Programs

Public Housing and Housing Choice (Section 8) Voucher Program

- Administered by Housing and Redevelopment Authority
- Tenants have Constitutional Rights
- Entitled to pre-deprivation hearing (Due Process)
- Federal Regulations govern lease termination process
- Two-step administrative process before eviction

Note: If a Voucher participant loses their voucher, they will often be evicted by landlord (for nonpayment of rent) and/or, if evicted by landlord (or lease terminated for cause), HRA will initiate voucher termination procedure

SUBSIDIZED HOUSING

Deep Subsidy Programs continued...

Housing and Urban Development (HUD) Programs

Project-based Section 8 and Section 202

- Properties owned by private parties (not government)
- Lease termination governed by federal regulations
- Proper notice of termination required
- Less robust administrative process
- Meeting to “discuss” termination within 10 days

SUBSIDIZED HOUSING

Deep Subsidy Programs continued...

U.S. Department of Agriculture Programs

Rural Development Housing (Section 515)

- Properties owned by private parties (more like project-based section 8 than public housing)
- Grievance process excludes lease termination and claims of discrimination (see 7 CFR 3560.160)
- Can use grievance process to challenge repair charges and other improper charges

SUBSIDIZED HOUSING

Non-Deep (Shallow?) Subsidy Programs

Low Income Housing Tax Credit (Section 42) Program

- Property developers get a tax credit (subsidy) in exchange for committing to keep rents at an “affordable” rate for a certain period of time (e.g. 20 years)
- Rents are usually based on what would be affordable to a tenant making 60% of Area Median Income (AMI)
- Tenants have to certify as “low-income” annually
- **Landlord must have “good cause” to terminate or not renew**

CARES ACT 30-DAY NOTICE REQUIREMENT STILL IN EFFECT

1. A “covered housing program” as defined by the Violence Against Women Act (VAWA),
2. Participates in the “rural housing voucher program” (Section 542 USDA housing), OR
3. Has a “federally backed” mortgage loan

Covered housing program cannot evict a tenant *for any reason except on 30 days’ notice.* § 4024(c)

EVICTION DEFENSE

MANUFACTURED HOME PARK ISSUES

Manufactured Home Park Issues (Minn. Stat Chap. 327C)

Additional protections apply to individuals who own their home (even if still paying off a loan secured by the home) and rent the lot on which the home is situated from the owner of the Manufactured Home Park (landlord)

A lease for an MHP lot can only be terminated for one of the reasons set forth in **327C.09** (there is no such thing as a “tenancy at will” or “month to month” tenancy for someone who owns their home and rents the lot)

Special notice requirements apply to terminations

EVICTION DEFENSE

MANUFACTURED HOME PARK ISSUES

Manufactured Home Park Issues (Minn. Stat Chap. 327C)

MHP owners (landlords) are also subject to prohibition on raising tenant's rents:

- Rent must be the same throughout park (for same size lots)
- Maximum pet fee of \$4 per pet per month
- No more than two rent increases per year
- Must give 60 day notice for any rent increase
- Cannot raise rent to pay a civil or criminal penalty imposed on the park owner by a Court or government agency

See Minn. Stat. 327C.03, Subd. 3 and 327C.06

EVICTIION DEFENSE MANUFACTURED HOME PARK ISSUES

Manufactured Home Park Issues (Minn. Stat Chap. 327C)

- Unreasonable Rules are Prohibited (327C.05)
- Security Deposit limited to two month's rent (504B.178 applies)
- Special rule on redemption for non-payment (327C.11, Subd. 1)
- Conditional Writ (can keep home on lot for 60 days) (327C.11, Subd. 4)

Generally, tenant rights in both Chapter 504B and 327C apply (use whichever one provides greater protection)

Additional Resources for MHP tenants:

All Parks Alliance for Change <https://www.allparksallianceforchange.org/>

Attorney General Handbook

<https://www.ag.state.mn.us/brochures/pubManufacturedHomeParks.pdf>

EVICTIION DEFENSE

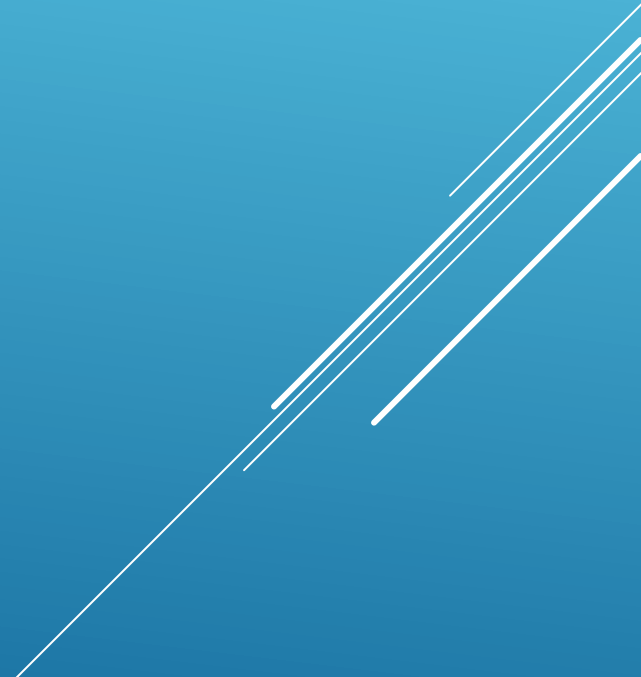
Eviction Clinics

- Olmsted County Eviction Prevention Clinic Started in 2019 (SMRLS, LAOC, LSS, Olmsted County)
- Mower, Steele, and Winona clinics in October 2021
- Expanding to all counties in Third District in March 2022

Settling Eviction Cases

- Does the landlord want the tenant out no matter what or do they just want their money?
- Expungement and/or Confidentiality

OTHER TYPES OF HOUSING CASES

1. Repair Cases
 1. Rent Escrow
 2. Tenant Remedies Action
 3. Emergency Tenant Remedies Action
 2. Illegal Lockout
 3. Retaliation
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OTHER TYPES OF HOUSING CASES

1. Domestic Violence
 1. Right to call police
 2. Right to terminate lease
 3. Violence Against Women Act (VAWA)
2. Subsidized Housing
 1. Rent Calculation
 2. Lease termination (additional protections from eviction)
3. Housing Choice (Section 8) Vouchers
 1. Voucher Termination
 2. Lease-up Issues
 3. Repairs (Housing Quality Standards)

OTHER TYPES OF HOUSING CASES

1. Eviction Expungements
 2. Contract for Deed Cancellations
 3. Foreclosure
 4. Miscellaneous
 1. Life Estates
 2. Non-traditional “tenancies”
 3. Nuisance Ordinance violations
 4. Security deposit issues
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OTHER TYPES OF HOUSING CASES

1. Discrimination

1. Protected Classes (different classes under federal, state, and local law)
2. Types of Discrimination (rental application denial, intimidation/retaliation)
3. Reasonable Accommodations
 1. Examples: Emotional Support Animals, allowing late rent payments (SSDI)
4. Reasonable Modification
 1. Examples: kick plates, strobe light smoke detector, visual doorbell