



Tenant Hotline
Phone: 612-728-5767
Online: [homelinemn.org/email](mailto:homelinemn.org)

Expungements

November 15, 2023 — 1:30-3:00pm
HOME Line Housing Attorney, Steve Rathke
HOME Line Policy Attorney, Larry McDonough

What is HOME Line?

- HOME Line is a statewide nonprofit organization providing free legal, educational, and advocacy services to Minnesota renters. We have advised over 310,000 renters since 1992.
- Our primary program is a free and confidential legal hotline any Minnesota renter can contact us to receive legal advice specific to their situation, in 4 languages.
- HOME Line has a staff of 32, including attorneys, tenant advocates, and tenant organizers. We also rely on volunteers and interns.



What is HOME Line?

HOME Line Tenant Hotline:

612-728-5767

Toll-free: 866-866-3546

- Para Español, llame al 612-255-8870
- Af- Soomaali wac 612-255-8860
- Hais lus Hmoob, Hu 612-255-7104
- Online: homelinemn.org/email



Housekeeping

- This session is being recorded and will be available on HOME Line's website in a few days
- Please ask questions through the Q&A function located at the bottom of the Zoom window
- 1.5 CLE credits will be applied for after this session



Upcoming Webinars



December 20, 2023

Public Housing Right to Counsel, Eviction Process

January 17, 2024

Renters' Credit

Visit homelinemn.org/newlaws/ for more information and to register

Upcoming Trainings

Mark your Calendars!

Thursday, December 7th, 2023 HOME Line will host a full day CLE on the specific rule changes taking place January 1, 2024

Register at homelinemn.org





NEW UPCOMING CLE

**Changes to Tenant/Landlord
Law in 2024**



December 7, 2023

9am - 3pm

5.5 Standard CLE
credits applied for

homelinemn.org

Expungements

Current Law

Expungement means the sealing of a court record so it is not publicly available.

Expungement distinguished from amending case caption:
Expungement of the eviction court file eliminates the electronic record of the action on the court's website, and leads to elimination of the records held by private tenant screening agencies that are sold to landlords. Amending the caption does remove the party's name from the court's website, but does not necessarily lead to elimination of the records held by private tenant screening agencies.

Expungement is available under both common law and statutes.

Common Law Expungement

Until the passage of an expungement statute, Minn. Stat. § 484.014 in 1999, the issue was one of common law, based on the court's inherent power to control court functions. Since expungement was unusual in civil cases, tenants often reserved this issue for special cases, such as when the tenant had no unlawful detainer cases on record and the landlord's cases was frivolous or retaliatory.

In 2014, the Minnesota Legislature amended Minn. Stat. § 504B.345, Subd. 1(c)(2), to provide that “the court may expunge the records relating to the action under the provisions of section 484.014 or under the court's inherent authority at the time judgment is entered or after that time upon motion of the defendant.” The amended statute was the first legislative recognition and approval of the continued use of common law inherent authority as a basis for expungement.

Common Law Expungement

In *At Home Apts., LLC v. D. B.*, No. A18-0512, 2019 Minn. App. Unpub. LEXIS 47 at *10-11, 2019 WL 178509 at *4 (Minn. Ct. App. Jan. 14, 2019) (Unpublished), the district court denied the tenant's expungement motion, discussing statutory expungement, but not addressing the tenant's alternative basis under the court's common law inherent authority. The Court of Appeals remanded for the district court to provide a written record of its findings and conclusions on whether it has inherent authority to expunge the records of the eviction action and, if it does, whether the facts support expungement.

Common Law Expungement

A non-exclusive list of factors were stated by Judge Connolly in his concurring opinion.

“(1) whether any back-rent is owed, how much is owed, and if there is a payment plan in place—although I do not believe that an expungement should be automatically denied solely because any rent owing has not been paid; (2) a petitioner's eviction history; (3) the cause for the nonpayment of rent—whether it was due to economic hardship or a mere willful refusal; (4) the length of time since the petitioner's last eviction; (5) whether the eviction was for a material breach of the lease other than nonpayment of rent (e.g., conducting illegal activity on the leased premises); (6) the number of evictions with the same landlord as opposed to different landlords; and (7) the term of the lease. See *State v. H.A.*, 716 N.W.2d 360, 364 (Minn. App. 2006) (describing analogous factors for criminal-record expungements).”

2019 WL 178509 at *4. See also *Housing & Redevelopment Authority of Duluth v. Young*, 995 N.W.2d 1 (Minn. App. July 31, 2023) (district courts have inherent authority to expunge judicially held eviction records).

Common Law Expungement

District courts have expunged eviction action records for a number of basis:

- Action should not have been filed
- Defendant not at fault
- Unique circumstances outside the defendant's control
- Good faith dispute
- Agreement of the parties
- File retained longer than in the Minnesota District Court Record Retention Schedule of one year

[See Residential Eviction Defense and Tenant Claims in Minnesota § III.E.5.a.](#)

Expungement Statute

Minn. Stat. § 484.014 Housing Records; Expungement of Eviction Information.

Subdivision 1. Definitions.

For the purpose of this section, the following terms have the meanings given:

- (1) "expungement" means the removal of evidence of the court file's existence from the publicly accessible records;
- (2) "eviction case" means an action brought under sections 504B.281 to 504B.371; and
- (3) "court file" means the court file created when an eviction case is filed with the court.

Expungement Statute

Subd. 2. Discretionary expungement. The court may order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that the plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.

Subd. 3. Mandatory expungement. [added in 2008 and amended in 2010] The court shall order expungement of an eviction case commenced solely on the grounds provided in section 504B.285, subdivision 1, clause (1), if the court finds that the defendant occupied real property that was subject to contract for deed cancellation or mortgage foreclosure and:

(1) the time for contract cancellation or foreclosure redemption has expired and the defendant vacated the property prior to commencement of the eviction action; or

(2) the defendant was a tenant during the contract cancellation or foreclosure redemption period and did not receive a notice under section 504B.285, subdivision 1a, 1b, or 1c, to vacate on a date prior to commencement of the eviction case.

History: 1999 c 199 art 1 s 74; 1999 c 229 s 1; 2008 c 174 s 1; 2010 c 315 s 1 - <https://www.revisor.mn.gov/statutes/cite/484.014>

Expungement Statute

Most decisions have focused on the basis of the landlord's action and proof for it. District court have expunged eviction action records for a number of bases:

- Plaintiff's default
- Service defenses: no proof of service, service by plaintiff or employees, lack of jurisdiction, improper mail and posting, improper substitute service
- Precondition defenses: insufficient pleading, failure to attach lease or notice, plaintiff not entitled to possession, case is moot, foreign limited liability company had no state certificate of authority, Section 8 voucher - failure to notify Section 8 Office, failure to disclose address, premature filing, accord and satisfaction, failure to register trade name
- Rent defenses: dispute over amount of rent, no license to rent, landlord waived prompt payment of rent, landlord waived claim by accepting part payment of rent, improper late fees, violation of covenants of habitability, premature rent claim, improper subsidized housing claims, privacy violations, constructive eviction, rent already paid before commencement of action by service of complaint
- Notice defenses: retaliation, improper notice, improper subsidized housing notice, waiver of notice, premature notice claim, manufactured home parks violations
- Breach defenses: illegal activity violation not proven, no right of reentry clause, manufactured home park lot violations, unenforceable lease violation, tenant did not violate lease

[See Residential Eviction Defense and Tenant Claims in Minnesota § III.E.5.b.](#)

Judge Review of Referee Denial of Expungement

Tenants have had success challenging
expungement referee denials on judge review.

[See Residential Eviction Defense and Tenant
Claims in Minnesota § III.E.5.c.](#)

Notice to Tenant Screening Agencies

Upon issuance of an expungement order, the court will remove the file from <http://pa.courts.state.mn.us/default.aspx>, its publicly accessible database.

The tenant then needs to send a copy of the order to all of the tenant screening agencies that are regulated by statute.

[Minn. Stat. §§ 504B.235 - 504B.245](#)

[See Residential Eviction Defense and Tenant Claims in Minnesota § III.E.5.d.](#)

New in 2023

The new cannabis law amended Minn. Stat. § 484.014.

[Minnesota Session Laws - 2023, Regular Session, Chapter 63, House F. No. 100 -](#)

Article 6, § 54, added to Minn. Stat. § 484.014, Subd. 3. Mandatory expungement.

“(b) If a tenant brings a motion for the expungement of an eviction, the court shall order the expungement of an eviction case that was commenced on the grounds of a violation of section 504B.171 or any other claim of breach regardless of when the original eviction was ordered, if the tenant could receive an automatic expungement under section 609A.055, or if the breach was based solely on the possession of marijuana or tetrahydrocannabinols.”

Since no effective date was listed, it became effective August 1, 2023.

New in 2024

[Minnesota Session Laws - 2023, Regular Session, Chapter 52, Senate F. No. 2909](#)

Article 19, §§ 117-119 also amended Minn. Stat. § 484.014. Under § 120, §§ 117-119 are effective January 1, 2024.

§ 117 deleted from subdivision 2 on discretionary expungement “only upon motion of a defendant and decision by the court, if the court finds that the plaintiff’s case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that” and replaced it with “if the court finds the.”

It now will read: “Subd. 2. Discretionary expungement. The court may order expungement of an eviction case court file if the court finds the expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.”

New in 2024

[Minnesota Session Laws - 2023, Regular Session, Chapter 52, Senate F. No. 2909](#)

§ 118 amended subdivision 3 on mandatory expungement. It removed the requirement of a motion by a party for most grounds, and added grounds to the existing mortgage foreclosure and contract for deed grounds:

- “(2) if the defendant prevailed on the merits;
- (3) if the court dismissed the plaintiff's complaint for any reason;
- (4) if the parties to the action have agreed to an expungement;
- (5) three years after the eviction was ordered; or
- (6) upon motion of a defendant, if the case is settled and the defendant fulfills the terms of the settlement.

New for 2024 but Invalidated

Minnesota Session Laws - 2023, Regular Session, Chapter 52,
Senate F. No. 2909

§ 119 added “Subd. 6. Nonpublic record. An eviction action is not accessible to the public until the court enters a final judgment, except that parties to the case and licensed attorneys assisting a party in the case, regardless of whether or not they are the attorney of record, shall have access to the eviction action file.”

The Minnesota Supreme Court invalidated it. Order Regarding Minn. Stat. § 504b.321, Subd. 6 and the Rules of Public Access to Records of the Minnesota Judicial Branch (Minn. Aug. 8, 2023).

New expungement law

- New expungement law does not preclude Motions to Expunge because most Tenants need evictions expunged before three years.
- So the need for a Motion to Expunge still exists

Motions to Expunge

Expungement template

Court Forms (<https://www.mncourts.gov/GetForms.aspx>)

- [Court Form HOU502](#) - Notice of Motion and Motion for Expungement of Eviction Record
- [Court Form HOU503](#) - Affidavit in Support of Motion to Expunge Eviction Record

[Steve's Eviction Expungement Motion](#)

Expungement instructions

Court Form

[Court Form HOU501](#) - Instructions - Expungement
of Eviction Record

[Steve's Eviction Expungement Instructions](#)

Easy cases

- Eviction has no basis in fact or law
- Eviction dismissed before or at hearing
- T wins eviction case
- Case settled and T makes all payments

Harder cases

- May require proof of payment:
- Court issues eviction order but T pays and not evicted
- Writ issues but T pays and not evicted
- Settle for less?

Very hard cases

- T evicted and still owes rent
- T evicted for bad conduct
- LL objects and has a valid basis

Add T' situation

E.g., number of times turned down for housing, T's realization that she cannot find suitable housing in the future, homelessness such as having to reside with family, responsibility to house minor children, other factors which show need for expungement.

Settled cases

Things to add to written settlements:

–Upon payment, LL will file Affidavit of Compliance and request for immediate expungement

–Upon payment, LL will not oppose T's Motion to Expunge

The hearing

- 45 to 60 days out
- T must mail LL the motion and notice
- T must file Affidavit of Mailing to the LL
- Zoom hearing
- But not in Hennepin County

Verify

- Did LL file Affidavit of Compliance?
- Is eviction still on record?

Screeener

- Eviction expunged but screener still reports eviction to LL
- T must notify screener that eviction was expunged



Questions?



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- HOME Line waxay bixisaa adeeg ku baxa Afka-Soomaaliga. Af- Soomaali wac 612-255-8860.
- Peb lub koom haum HOME Line muaj neeg txhais lus Hmoob. Hais lus Hmoob, Hu 612-255-7104.

Upcoming Webinars



December 20, 2023

Public Housing Right to Counsel, Eviction Process

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Thank You