### Battered Women's Legal Advocacy Project, Inc.

# Expunging your Eviction Case (Unlawful Detainer) from Your Records

For a battered woman, finding a new apartment is critical to her ability to be self-sufficient. Part of the process of finding a new apartment, however, often involves a tenant screening check through a tenant screening agency. A typical screening check might include: verifying addresses for the last three years, calling previous landlords, running a credit check to find any unpaid bills or other debts, and/or checking for a criminal background. It also will include checking for past evictions.

Often, a battered woman will have a record of an eviction. Sometimes she wasn't able to pay the rent because the abuser stopped paying his or her share. Sometimes, she fled her apartment to be safe and hasn't gone back. It is possible she lost her job because of the abuse. There may be any number of factors behind her evictions. For whatever reason, if a woman has a record of an eviction case, it can greatly hinder her chances of finding a new apartment.

This technical assistance packet describes some actions a tenant can take to either explain or expunge her eviction case from her record. Copies of applicable statutes and court forms can be found at the end of the packet.

Originally compiled November 2001 Last updated November 2005

#### Attached:

Notice of Motion and Motion Form Affidavit of Service Form Applicable Statutes

> 1611 Park Avenue South Minneapolis, MN 55404 1-800-313-2666 612-343-9842 Fax: 612-343-0786

#### **Table of Contents:**

What is an expungement order?	2
Who can get an expungement?	
How can I ask the judge to expunge my eviction case?	
What happens when I file a motion for expungement?	3
What will happen at the hearing?	4
What is the difference between evidence and argument?	4
How do I know what to argue?	5
How do I file an expungement motion?	6
How do I prepare for the expungement hearing?	10
What if I win my expungement case?	12
What can I do if I lose my expungement case?	12
Sample Statement of Evidence	14
Sample List of Questions for a Witness	15
Sample Argument to the Court	18
Forms: Notice of Motion and Motion; Affidavit of Service	19
Sample Letter to Tenant Screening Agency	21
Commonly-Used Tenant Screening Agencies in Minnesota	23
Applicable Statutes for Evictions and Expungements	24

#### What is an expungement order?

An expungement order is an order to seal the eviction case from your civil court records. After a judge orders an eviction case expunged, tenant screening agencies will not find a record of the eviction case. Those tenant screening agencies that had located the eviction record prior to expungement are required to update their records to show that there is not an eviction case and to inform anyone who requested your rental history in the past six months that the eviction has been removed. However, the screening agency must be informed of the expungement order.

#### Who can get an expungement?

Expungements are given at the discretion of the judge at the hearing. There are three criteria for granting an expungement. First, you must be able to sufficiently show that the landlord did not have any legal or factual basis to evict you. Second, that removing this eviction from the record is clearly in the interests of justice. Third, that the interests of justice are not outweighed by the public's interest in knowing about the eviction.

The following three situations can result in expungements.

The eviction case was dismissed: if you file the motion the judge will usually order it expunged from your records. An eviction case might be dismissed, for example, if you and the landlord come to an agreement resolving the case. (You might have paid the landlord the back rent as well as the filing fee.) You must file a motion to get the expungement, it will not happen automatically.

- <u>You won the eviction case:</u> if you file a motion the judge will usually order it expunged from your records.
- You did not show up at the eviction hearing, and the judge entered a default judgment against you, however, you would have won had you shown up: If you file a motion you will have to prove:
  - 1. That you had a very good reason why you could not show up at the original hearing and be able to offer the judge proof supporting the reason

#### **AND**

2. That the landlord's case was without basis in law or fact (there was no legal reason to evict you, or the facts do not prove a legal reason) he may expunge the eviction. It is more difficult to get an expungement in this situation. You will need to have a very good reason why you did not show up to the original hearing and be able to offer the judge proof supporting the reason.

#### How can I ask the judge to expunge my eviction case?

There are two ways to ask the judge to expunge your eviction case:

1) If you are still in the eviction hearing, you can ask for an expungement during the hearing. Remember, even if you win the eviction case or the judge dismisses the eviction case, you still must specifically ask the judge to expunge the record of the eviction case, or it will remain on your housing record. You may ask the judge orally during the hearing to expunge the eviction from your record, however, most judges will require you to file a separate motion.

#### OR

2) If the eviction case is over, or the judge denies your request in court, you may ask the judge to expunge your eviction case by filing a written "Notice of Motion and Motion." A blank Notice of Motion and Motion are attached to this packet. There are also instructions for how to fill them out, including ideas for arguments you might make to the judge.

#### What happens when I file a motion for expungement?

A court hearing is scheduled at which you will be able to tell the judge why you think he or she should expunge your eviction case.

#### What will happen at the hearing?

To convince the judge to grant your request, you will need to give the judge evidence as well as arguments. It is *your job* to give the judge everything he or she needs to grant your request. A judge is not going to call witnesses or research the law for you. The landlord will also be able to present the court with evidence and argument in an attempt to convince the judge to deny your request.

Generally, the judge will ask for your argument first, then he will ask for your evidence, and then for a final argument. It is important to understand the difference between evidence and arguments. There are strict rules about when a person can present evidence and when a person can present argument. If you present evidence or an argument at the wrong time, the judge will probably stop you, and you may not get a chance to tell the judge all of the information.

When you are in doubt as to which you should be presenting, you can ask the judge (very respectfully of course) "Your Honor, do you want my arguments now or my evidence?"

#### What is the difference between evidence and argument?

It is not always easy to tell the difference between a fact, evidence, and argument. A simple rule, however, is:

- A fact is an event that has happened or is happening.
- o Evidence is something that shows that the event happened.
- Argument is a statement to a judge to convince the judge that your evidence proves your facts, and that your facts support your case, and ultimately that the expungement should be granted.

#### For example:

FACT (brief examples)	EVIDENCE (brief examples)	ARGUMENT (brief examples)
The landlord accepted my rent check.	Copies of your cancelled rent checks.	These cancelled rent checks show that I paid the rent and the landlord kept and cashed my checks. His claim that I did not pay my rent is untrue and I should not have been evicted. Therefore, my eviction record should be expunged.

FACT (brief examples)	EVIDENCE (brief examples)	ARGUMENT (brief examples)
The landlord failed to make necessary repairs and the apartment was unfit to live in.	You testify that your apartment had no water for a week, and that you called your landlord every day to ask him to make the repairs. A witness testifies that she was in your apartment every day that week, and that it had no water.	My testimony and my witness testimony show that my apartment did not have water for a week and therefore it was not fit to live in. The apartment did not have worth. I had a reason for not paying rent that was valid. I should not have been evicted, and the eviction case should be expunged.
The landlord filed the eviction action three weeks after you called the police.	You testify that you called the police and that the police came out to arrest your abusive partner for hitting you. A copy of the police report from your call to the police that shows the date. A police officer's testimony that this record is authentic ("real"). A copy of the landlord's petition to evict which shows the date that he filed.	The date that I called the police is proven by this police report and the date that the landlord filed the eviction action is proven by the date on his papers. I did not otherwise violate the terms of the lease. Therefore, it is clear that the landlord filed this action to punish me. The landlord should not have won. The eviction action should be expunged.
You were a quiet tenant.	You testify that you were a quiet tenant and that you did not have guests over all the time like your landlord said. Your neighbor also testifies to that.	The testimony shows that I was a quiet tenant. The landlord did not present any witnesses to support his claim that I was loud. His claim that I was loud is untrue and I should not have been evicted.

#### How do I know what to argue?

Ideas for arguments are found below in "How do I file an expungement motion?"

To help you create other arguments, go to your county's law library to learn the law. Ask the librarian for help in getting started.

There are two types of law: statutes and case law. Statutes are the law that is passed by the Minnesota State Legislature. It is organized into chapters and subchapters. Most of the statutory law for tenant law is found in chapter 504B, Minnesota Statutes.

Case law, on the other hand, is from the Appellate Court and Supreme Court and tells district courts how to follow the statutory law. Case law is more difficult to find because it is not organized into specific areas of law but rather by date of the court opinion. One good way to find case law that is relevant to your case is to find the "Statutes Annotated"

books. Then look under the statute that pertains to your case to find brief descriptions of case law that discusses that statute.

#### How do I file an expungement motion?

Blank forms to fill in are found at the end of this packet. Expungement forms can also be found at The Minnesota Judicial Branch website at: http://www.courts.state.mn.us/forms.

At the top of the NOTICE OF MOTION AND MOTION form (<u>page 19</u>), fill in the caption of the case exactly as it appears in the eviction papers you received. (The landlord will be the plaintiff. You will be the defendant. And the case number will be the one listed on the papers.)

Leave the paragraph under "TO: Plaintiff" blank. The clerk of courts will fill it in.

Under the heading "Motion" the paragraphs are numbered. Only fill in paragraph 1 if the tenant has an additional request to make besides expungement. For paragraph number **2 part a**, list the reasons why the landlord's case was without sufficient basis in law or fact to evict the tenant (tell why the landlord should not have won the eviction). List as many reasons as possible.

For example:

- **IF you won the case**, write the findings that the judge made at the eviction hearing when the judge ruled that you won.
- <u>IF the case was dismissed</u>, write the findings that the judge made at the eviction hearing when the judge ruled that the landlord's case failed.
- IF you did not show up at the eviction hearing, and you think you would have won had you shown up, you should tell the court BOTH why you didn't show up at the hearing AND why you think you would have won had you shown up at the hearing.

#### WHY YOU DIDN'T SHOW UP AT THE HEARING -some reasons might be:

The landlord did not properly serve me with notice of the hearing. Proper service means I must have received the papers at least 7 days prior to the hearing; AND the papers must have been served on me or on someone who lives at my home who is old enough to understand them (usually 15 years old or older) AND the papers cannot be served by the landlord or the landlord's employees. The landlord failed to properly serve the papers because \_\_\_\_\_\_.

<sup>&</sup>lt;sup>1</sup> This happens fairly often. If the landlord did not properly serve you, then the eviction case should have been dismissed. However, usually judges will not notice improper service unless someone brings it to their attention. However, even if the eviction case should have been dismissed due to the landlord not serving you properly, you will need to show the judge that you would have won had you been at the hearing.

(Describe how the landlord failed to follow all/any of the above)

0	I showed up several minutes late for the hearing and the hearing had
	already taken place and the landlord had gone home. I was late for the
	hearing because
	(give a <i>very</i> good reason why you were late for court)

### WHY YOU WOULD HAVE WON HAD YOU SHOWN UP AT THE HEARING – some reasons might be:

- The landlord brought the action to punish me for having called the police to protect me from my abusive partner, which is prohibited by Minn. Stat. § 504B.205.
- o I did not receive proper move-out notice<sup>2</sup>
- o The landlord is stating that I violated the lease, but I never signed a current written lease.
- The landlord is stating that I violated the lease, but the landlord continued to accept rent from me, which constitutes a waiver of the alleged lease violation.
- o The landlord is stating that I violated the lease, but someone outside of my control took the actions the landlord is complaining about.
- The landlord is stating that I violated the lease, but I have a disability that caused me to violate the lease and the landlord did not give a "reasonable accommodation" for my disability.

0	The landlord is discriminating against me because of my (race, sex,
	disability, sexual preference, religion, national origin, having children and /or receiving welfare):
	(Include details regarding discrimination)

- o The landlord failed to provide me with the landlord's name and street address (not just a post office box) at least 30 days prior to filing the eviction case.
- The landlord uses a trade name that is not registered at the Secretary of State's office.<sup>3</sup>

<sup>2</sup> This defense would apply if you have not broken your lease or failed to pay your rent. In that case, the landlord must give you proper move out notice before evicting you. Proper move out notice would be described on your lease. If you do not have a lease, and are renting month-to-month, then you must receive the notice at least a month and a day before the move out date. (For example, on a month-to-month lease, if the move out date is July 1, then you must have received notice no later than May 31.)

The landlord had failed to make certain repairs and as a result the apartment was not fit to live in. I should not have to pay rent when the apartment was not fit to live in because that is as though it were condemned. (See, by way of example, Minn. Stat. § 504B.204, and *Love v. Ansler*, 441 N.W.2d 555 (Ct. App. 1989). The repairs that the landlord did not make were:

(List the Repairs that should have been made)

- o I believe the landlord filed the eviction action to punish me for my good faith attempts to enforce my rights under the lease. (Tell what you did to enforce your rights under the lease.) The landlord served the notice to quit within 90 days of my reporting him. According to Minn. Stat. § 504B.285, Subd. 2, this means the burden of proving that the notice to quit was not retaliatory rests with the landlord.
- The landlord filed the eviction action to punish me for reporting him for violation of a health or safety or building code or ordinance. (Give details of your reporting the landlord for the violation.) The landlord served the notice to quit within 90 days of my reporting him. According to Minn. Stat. § 504B.285, Subd. 2, this means the burden of proving that the notice to quit was not retaliatory rests with the landlord.
- o The landlord unlawfully raised my rent. I am willing and able to pay the rent that was due under the original lease.
- o The landlord unlawfully decreased the services that he is obligated to provide to me under the terms of the lease.
- O The landlord's claim that I materially violated the terms of the lease is false. (State why the landlord's claim is false.) I have good arguments that I do not owe rent. (State your arguments why you do not owe rent.) If the court decides that I do owe rent, I should be given seven more days to pay any rent that the court determines is due. (Minn. Stat. § 504B.285 Subd. 5(c))

8

<sup>&</sup>lt;sup>3</sup> This defense won't apply very often. However, if your landlord uses a trade name, such as "ABC Rentals", it is worth your investigation. Call 651-296-2803, email public.information@state.mn.us or visit 180 State Office Building; 100 Reverend Dr. Martin Luther King Jr. Blvd.; St. Paul, MN 55155 Hours 8:00 A.M. – 4:30 P.M. the Secretary of State's office to find out if the trade name is registered. If it is not, the court should have thrown out the initial eviction case and might consider expunging your record even at this late date.

For **paragraph 2 part b** of the motion, list the reasons why it is in the interest of justice (fair) to expunge the case and against the interest of justice to leave it on the record. An example might be:

o It is not fair to leave the eviction on my record where tenant screening agencies will see it and report it to potential landlords. The potential landlords would assume that I am a problem tenant, when in fact my former landlord's case had no merit. It is extremely difficult to find an apartment with an eviction case on my record. I am a good tenant and it is not fair that I be punished for seven years<sup>4</sup> when the landlord's allegations were not true and/or not sufficient to evict me.

For paragraph 2 part c, list the reasons why it is not important for the public to be able to find out about this eviction case.

- If you won your eviction case, or it was dismissed, a reason might be:
  - It is not important for the public to know about an eviction action that was filed against me without merit. Additionally, it is misleading the public to leave this eviction action on my record since it gives the impression that I am a bad tenant, when in fact the landlord did not win his case.
- If you did not show up at the eviction hearing, and you would have won had you shown up, some reasons might be:
  - O It is not important for the public to know about an eviction action that was filed against me that I did not have a chance to present my side of the story. Additionally, it is misleading the public to leave this eviction action on my record since it gives the impression that I am a bad tenant, when in fact the landlord's case is sufficiently without basis in fact or law.
  - The public has an interest in people being housed in our community, and this eviction action on my record will decrease the chances of my being able to find an apartment.
  - This eviction action on my record decreases the chances of my finding a suitable apartment for my children and me. The public has an interest in preventing the homelessness of children and promoting the safety and well being of children.

Finally, in **paragraph 3**, if the tenant has any documents or affidavits that support what she is telling the court in her motion she should attach copies to the motion. Examples might include, the lease, any relevant photographs, any relevant police reports, any letters the tenant sent to the landlord, any letters the landlord wrote to the tenant, and any inspection reports. (Note: Also bring copies of these documents to the hearing.)

-

<sup>&</sup>lt;sup>4</sup> Seven years is how long an eviction will remain on your record.

Do not sign your papers until you are in front of a notary public. Usually, court clerks, bank personnel, and advocates are notaries. Also, print your name, address, and phone number below your signature. If you do not want to give out your real address and phone number, list an address and phone number at which you can receive messages. If you list an address at which you can receive messages, BE SURE THAT THE PERSON CAN REACH YOU OR CHECK OFTEN FOR MESSAGES SO YOU DON'T MISS ANY IMPORTANT LEGAL NOTICES OR MESSAGES.

If you have a low income, you can fill out an In Forma Pauperis (IFP) form instead of paying the filing fee. Be sure to bring proof of your income with you when you file. And, if you receive any form of public assistance, such as MA, SSI, Social Security disability, MFIP, MFAP, be sure to bring proof of your benefits with you. (Proof of receiving public assistance will help convince the court of your inability to pay the filing fee.)

Go to your District Court and file your motion. In Hennepin County, go to Housing Court, Room A-1700 of the Government Center. The court clerk will fill in the top of your Notice of Motion and Motion. Make two copies of your Notice of Motion and Motion. File the original with the court clerk, keep one copy for your records, and send one copy to the landlord with the Affidavit of Service.

Fill in the Affidavit of Service that is attached to this packet. Do not sign until you are in front of a notary. Then be sure to mail it with the Notice of Motion and Motion on the date and from the city that you named in the Affidavit.

Prepare for the hearing. You will not get a second chance to present your case, so bring everything and anyone with you that might be helpful to your case.

#### How do I prepare for the expungement hearing?

It is important to prepare in advance for the hearing. That way, you are more likely to be successful in telling the judge the important points of your case. Suggestions for how to prepare are:

- □ Learn the difference between evidence and arguments.
- ☐ In advance, make a written outline of the statement of facts that you would like to make to the court. You should organize your facts around three topics:<sup>5</sup>
  - 1) Why the landlord did not have sufficient basis in law or fact to evict you;
  - 2) Why it is clearly in the interests of justice to expunge the case (including why you did not make it to the eviction hearing, if that is the case); and

-

<sup>&</sup>lt;sup>5</sup> These three topics are in your written motion papers, too.

Why it is not important for the public to be able to find out about this eviction case.

A sample statement of facts is found in the section: Materials and Forms for Preparation

- ☐ Make a written outline of all the arguments you wish to make at the hearing. Again, organize your outline around the three topics above. A sample outline for your arguments can also be found in the Materials and Forms for Preparation section at the end of this packet. Ideas for arguments are found in the instructions for how to file the motion (above).
- □ Talk to witnesses and ask them to come to the hearing. Testimony in court from a witness is much better than a written statement, as often judges will not allow written statements. Note: you cannot testify as to what another person said or would say you must bring that person to court for the judge to consider what that person would say. If a witness does not want to come, ask a court clerk how to subpoena the witnesses, which will require the witness to come.
- ☐ Make a separate written list of the facts that you want each witness to tell the judge. Then write the questions that you want to ask each witness to allow them to tell these facts. Your witnesses' testimony should be limited to information about the above three topics. Most of your witnesses' testimony will probably be on the first and second topics. Remember that witnesses give testimony, not argument, to the court. (Sample questions for witnesses are found at the end of the packet)
- ☐ If a witness has documents or evidence that he or she won't give you, ask the court clerk about a subpoena for the evidence.
- □ Organize any other evidence you may have to bring to the hearing, such as copies of leases, photos, letters to or from your landlord, inspection reports, receipts, and estimates. Make at least three copies of each piece of evidence one for the other side (landlord), one to give to the court, and one for you to keep. (The court will want to see the originals and may even want to keep the originals.)
- □ Go to your county's law library to learn the law. Ask the librarian for help in getting started (but do not expect the librarian to do your research for you). One helpful book is the <u>Statutes Annotated</u>, which provides a brief description of cases organized under the statutes the cases discuss.
- □ Practice presenting your case to a friend.
- □ Go watch a court case in civil court so you can have an idea of how it works. If you can, watch a court case in front of the judge who is assigned to your case so that you get an idea of what he or she is like.

At the hearing be extremely polite to the judge and to the other side. If the judge is talking, never interrupt him or her. If the judge interrupts you, stop talking immediately and listen to what the judge is saying. Ask the judge when to present your argument and when to present your evidence. Ask the judge's permission to call your witnesses and to give the judge your other evidence (papers, photos, etc).

Note: If you won your original eviction case or the original eviction case was dismissed, then you will most likely not have to bring witnesses to the hearing. This is because you already have some indication on the record that you should have won the original eviction case. If, however, you lost the original eviction case, then you will need to bring witnesses to the hearing because you will have to convince the judge that you should not have lost the original eviction case.

#### What if I win my expungement case?

If you win your expungement case, then you should check your court record in several days to make sure the eviction case was in fact expunged. Then you must contact the Tenant Screening Agencies in Minnesota to tell them that your record was expunged and ask them to update their records accordingly. A list of the Tenant Screening Agencies in Minnesota is attached at the end of this packet.

When you apply for an apartment, find out what tenant screening company the landlord uses. If it is not one that you have called, then call that one too to make sure that it has updated records. If that tenant screening agency has records from prior to the expungement of your eviction case, then inform them that your eviction case has been expunged and ask them to update their records. The law states that a screening company may not report an eviction once the company knows that the eviction case has been expunged.

#### What can I do if I lose my expungement case?

You may file and lose an expungement case. Or, you may decide to not file an expungement case because you think you would probably lose. If this is the case, it might help you to write a short statement to the tenant screening agencies explaining your eviction case. The tenant screening agencies are required to attach this to your tenant screening report that they give landlords. The statement must be 100 words or less. For example:

In the last thirty years, I have always paid my rent on time and complied with the lease. The only exception occurred recently in Minneapolis when I had to leave an apartment in a hurry because I was being stalked and my stalker knew where I lived. I had to leave to be safe. I also lost my job so I could not pay my rent. I am now working again and have set up a payment plan with my previous landlord to pay him back the money I owe.

Your statement will be different depending on your particular situation. It may be helpful to write a draft or two to make sure you can tell as much of your story as possible in 100 words or less.

When you write your letter to the tenant screening agencies, it would help them attach your statement to the correct record if you include certain information in your statement. This information includes: your name, your date of birth, the county in which the eviction case was filed, the date it was filed, and the case number of the eviction case. At the very least, you need to send them your name and the county in which the eviction case was filed.

There is a sample letter at the end of this packet, along with a list of the commonly used tenant screening agencies.

When you apply for an apartment, find out what tenant screening company the landlord uses. If it is not one that you have sent your statement to, find out the company's address and send your statement to that company as well.

You can also ask for a copy of your tenant screening report to make sure that it is correct. Sometimes tenant screening reports contain wrong information and it could be that this wrong information is hurting you.

Finally, you may want to apply only with landlords who do not charge application fees and do not use tenant screening services.

#### **Sample Statement of Evidence**

#### SAMPLE STATEMENT OF EVIDENCE TO THE COURT (your testimony)

My name is Gretchen Michel and I am the defendant. I started renting an apartment from John Greene on July 1, 2000.

The landlord's case against me is sufficiently without basis in law or fact. I paid my rent each and every month. Here are copies of my cancelled checks, which show that Mr. Greene cashed my rent checks. I was a good tenant and I did not violate any of the terms of the lease. Once, my boyfriend got really loud, and I asked him to leave, and he left after about an hour, but that was the only time any guest of mine was loud. Mr. Greene says that I violated the lease because he says I had all kinds of visitors at all hours of the day and night and that is not true. There is one time that my brother's car broke down nearby and he stayed over night. And there was one time that a girlfriend and her son stayed over night with me because they were in town for a wedding.

I believe that Mr. Greene's eviction action was filed because I reported him to the city for failing to fix my water. I had no water for a week and I had to get bottled water and take showers at my mother's apartment. My friend, whose son I watch while she works, came over and she saw that I had no water. I called Mr. Greene and left messages on his voice mail, and he never came to fix the water. So I called the city and I think they got him in trouble. He filed this eviction action the next month.

Because I didn't make the original hearing, the landlord won and I was evicted. But I was not able to come to the hearing. I did get served with notice of the hearing, but on that day, my car broke down. I called all my friends and they could not give me a ride. I called a cab, but by the time it came and got me and took me to the courthouse, the hearing was already over and Mr. Greene had gone home. So I was told that it was too late and that I had lost the case.

It is unfair to leave this eviction case on my record. I have been searching for an apartment since then and no one will take me because of the eviction on my record. Every time I talk to a landlord, he seems to like me, but then once he checks my record, he is not interested in me anymore. My child and I have been homeless and have had to sleep in church basements while I keep looking for a place for us to live. I have not been able to watch my friend's child during the day, so I have not been able make that money. It is not fair that I have to live like this when I was a good tenant. The eviction on my record makes landlords think I'm a bad tenant when I was a good tenant.

-

<sup>&</sup>lt;sup>6</sup> These paragraphs give details on the first topic.

<sup>&</sup>lt;sup>7</sup> This paragraph explains to the judge why you did not come to the initial hearing.

<sup>&</sup>lt;sup>8</sup> This paragraph gives details on the second topic.

It misleads the public to leave this on my record because it makes them think I was a bad tenant. And the public has an interest in my child and me having a good place to live. There is no good being served by this eviction being on my record.

#### Sample List of Questions for a Witness

I would like to call Joleen Emerson as a witness.

(witness is given the oath by the court.)

The first seven questions are called foundational questions. They establish background facts about the witness to show that they have personal knowledge of the facts they are about to report to the court. While they may contain information that is obvious to you and the witness it is important to ask foundational questions to establish for the court whether and how the witness knows certain facts that are relevant to your case.

- ➤ "Please state your name and address." (My name is Joleen Emerson. I live at XXX Cedar Ave, Minneapolis.)
- ➤ "What is your occupation?" (I work full time as a janitor at Ann Sullivan school.)
- ➤ Do you know me? (Yes.)
- ➤ How do you know me? (We have been friends for five years and you used to baby-sit my son when we lived in the same apartment building.)

It's important that you ask open-ended questions to witnesses that you call, allowing the witness to give the information. Avoid leading questions such as: Did we both live at XXX Cedar Ave four years ago? It can be difficult to ask open ended questions when you want specific information from a witness, so if they don't answer with the information you need to ask another question. For example say you wanted to the court to hear that this woman used to be your neighbor, but when you asked, "How do you know me?" she answered "We're friends." You need to follow it up with questions like, "How long have we been friends?" (since summer 2000, when you moved into the apartment building I lived in) or "How did we meet?" (we were neighbors in the same apartment building you used to baby-sit my son, and we got to know each other that way.)

- ➤ What apartment building did we live in? (We lived at XXX Cedar Ave. Minneapolis)
- ➤ Who was the landlord of this apartment building when we both lived there? (Mr. Greene)
- ➤ How often did we see each other when we lived in Mr. Greene's apartment building? (I used to come over at least twice every weekday to drop off and pick up my son.)

-

<sup>&</sup>lt;sup>9</sup> This paragraph gives details on the third topic.

- ➤ Did you visit me in the month of August, 2001? (Yes)
- ➤ During that month what, if anything, was wrong with the apartment? (You had no water in your apartment for about a week.)

Adding the disclaimer "if anything" to the question when you ask it keeps it from being leading, because it allows the witness to say that there was nothing wrong with the apartment, without the disclaimer it leads the witness to say that there was something wrong with the apartment.

➤ How do you know this? (I tried to get water out of the faucet and nothing came out. You told me that I'd have to use the neighbor's bathroom if I had to use a bathroom.)

It is good to follow up a fact that a witness gives with a question of how they know that fact, if it has not been established already. The witness needs to have personal knowledge of the fact that they tell, they can't have heard it from you or anyone else, they need to witness it.

➤ Thank you. I have no other questions. SAMPLE QUESTIONS FOR ANOTHER WITNESS

I would like to call Sue Olson as a witness.

(witness is given the oath by the court.)

- ➤ "Please state your name and address." (My name is Susan Olson. I live at XXX Cedar Ave, Minneapolis.)
- ➤ "What is your occupation?" (I work in a factory first shift.)
- > Do you know me? (Yes.)
- ➤ How do you know me? (I rented the apartment next to yours.)
- ➤ What apartment building was this? (The building is at XXX Cedar Ave, Minneapolis)
- ➤ During what period of time were you my next-door neighbor? (From July, 2000 when you moved in until October 2001 when you left)
- ➤ Can you tell the court what kind of tenant I was, in terms of being loud or quiet? (You were a quiet tenant. Not like the people down the hall who are always playing their music really loudly.)
- ➤ Were you home a lot? (I was always home in the evening because I have two children.)
- ➤ Did you notice whether or not I had a lot of visitors at night? (I did not notice that you had visitors.)
- ➤ Do you think you would have noticed if they were loud? (Yes, I do, because the walls are very thin.)
- ➤ Did you ever have any complaints about me? (No, I thought you were a good neighbor. You were quiet and you helped me out sometimes watching my children.)

- ➤ In the month of August 2001, what help, if any, did I ask you for? (You asked me if you could use my bathroom in the mornings and right before bedtime. You said yours wasn't working.)
- ➤ How often did I come over and use your bathroom? (You used it at least twice a day. I even left you my keys in case you needed to use it during the day, if you didn't go to your mother's.)
- > Thank you. I have no more questions.

#### Sample Argument to the Court

Your honor, the landlord did not have sufficient legal or factual basis to evict me. <sup>10</sup> The evidence shows I was a good tenant. I was quiet. I paid all my bills. I abided by all the terms of the lease. The landlord's statement that I was loud and violated the terms of the lease is false. My witnesses have testified that I was a quiet and good tenant. My cancelled checks show that I paid my bills. The only reason I can think of why the landlord brought this eviction case is because I reported him to the city for failing to fix my water problem. That is a violation of the law.

It is clearly in the interests of justice to expunge this eviction.<sup>11</sup> It is wrong that I have an eviction case on my record when I did nothing wrong, and the eviction was illegal. It is preventing me from finding a good home for my child and myself. I have been living on the streets and that is not good for my child. It is fair to expunge the case because the landlord never should have won in the first place. And, as I testified, I did everything I could to make it to the hearing, but with my car trouble, I didn't get there on time, the court had already ruled, the landlord was gone and the they couldn't reopen the case right then.

It is not important for the public to be able to find out about this eviction case. <sup>12</sup> The eviction case gives the impression that I am not a good tenant, and that is not true. It misleads the public to leave it on my record. It is important for the public that I find an apartment for my child and myself and get off the streets. I have not been able to find an apartment with this on my case.

Please grant my request and expunge this eviction case from my record. Thank you for listening to me.

<sup>&</sup>lt;sup>10</sup> This is the first topic.

<sup>&</sup>lt;sup>11</sup> This is the second topic.

<sup>&</sup>lt;sup>12</sup> This is the third topic.

State of Min	nnesota			District Court
County			Judicial District: Court File Number:	
			Case Type:	Housing
Plaintiff (Landlord)				<b>Motion and Motion</b>
vs.	Address		Evic	xpungement of etion Record Stat. §484.014)
Defendant (Tenant)				
	Address			
TO: Plaintif	f			
PLEASE TAK	E NOTICE THAT at the hearing			Date Time
	;		Court Location	
I will ask the C	Court for an Order as follows:			
		M	otion	
_	g the court to expunge this evice			cord. List any additional reques
requests).	g the Court for the Expungement NOTE: You must answer a, b, dlord's case was without suffice	, and c	···	
b. Expung	gement is clearly in the interests	s of ju	stice because:	
c. The inte	erests of justice are not outweig	ghed b	y the public's interest	in knowing about the record
because	2:			
	ing the following documents or nditions required by the Court			ort my request and show that I

#### **Verification and Acknowledgements:**

- a. I have read this document. To the best of my knowledge, information and belief the information contained in this document is well grounded in fact and is warranted by existing law.
- b. I have not been determined by any court in Minnesota or in any other State to be a frivolous litigant or subject to an Order precluding me from serving and filing this document.
- c. I am not serving or filing this document for any improper purpose, such as to harass the other party or to cause delay or needless increase in the cost of litigation or to commit a fraud on the court.
- d. I understand that if I am not telling the truth or if I am misleading the court or if I am serving or filing this document for any improper purpose, the court can order me to pay money to the other party, including the reasonable expenses incurred by the other party because of the serving or filing of this document such as court costs, and reasonable attorney fees.

Dated:	
	Signature (Sign only in front of notary public or court administrator.)
	Name:
Sworn/affirmed before me this	Address:
day of	City/State/Zip:
	Telephone: ( )
Notary Public \ Deputy Court Administrator	•

Plaintiff	AFFIDAVIT OF SERVICE BY MAIL
Defendant	FILE NO:
of the above documents, enclosed in a envelope in the United States Mail at	(landlord's name) by mailing to him/her true and correct copies in envelope, postage prepaid, and by depositing the (name of city), Minnesota on irected to his/her last known address as follows:(landlord's name)(landlord's address)(landlord's city/state/zip)
Sworn/affirmed before me this day of,	
Notary Public/Court Deputy	

**Sample Letter to Tenant Screening Agency** 

Dear Tenant Screening Agencies:
I am writing to ask that you attach the following statement to your screening report:
Thank you for your time.
Sincerely,
(sign here)
Name:(insert your full name)
DOB:(insert your date of birth)
County of filing:(insert the county in which the UD was filed)
Date of filing:(insert, if you know, the date the UD was filed)
Case Number:

(insert, if you know, the case number of the eviction action)

#### **Commonly-Used Tenant Screening Agencies in Minnesota**

Apartment Services Plus 7400 Metro Blvd Edina, MN 55439 (952) 925-9592

Rental Research Services 11300 Minnetonka Mills Rd Minnetonka, MN 55305 (952) 935-5700

Landlord Protection Agency 1306 West County Rd F Arden Hills, MN 55112 (651) 636-5988

Landlord Protection Agency 1075 W Co Rd E Shoreview, MN 55126 (651) 765-2600

Renters Acceptance 7525 Mitchell Rd, Suite 301 Minneapolis, MN 55344 (952) 259-1199

Delta Services, Inc. 6009 Wayzata Blvd. Suite 228 St. Louis Park, MN 55416 (952) 595-8648 CDR, Inc. 2845 North Hamline Ave, Suite 132 Roseville, MN 55113

MultiHousing Credit Control 10125 Crosstown Circle, Suite 100 Eden Prairie, MN 55344 (952) 941-0552

Tenant Check 857 Fairmont Ave St. Paul, MN 55105 (651) 224-3002

Rental History Reports, Inc. 10301 Wayzata Blvd, Suite 200 Minnetonka, MN 55305 (952) 545-3953

Tenant Scan 9920 Zilla St NW, Suite 400 Coon Rapids, MN 55433 (763) 754-8777

Tena InfoBureau Services 251 West Layfayette Frontage Rd South St. Paul, MN 55107 (651) 293-1234

Experian Information Services 2001 Killibrew Drive, #346 Bloomington, MN 55425

#### **Applicable Statutes for Evictions and Expungements**

#### 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.

**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.

## MINN. STAT. §504B.285. Eviction actions; grounds; retaliation defense; combined allegations

**Subdivision 1. Grounds.** The person entitled to the premises may recover possession by eviction when:

- (1) any person holds over real property:
- (i) after a sale of the property on an execution or judgment;
- (ii) on foreclosure of a mortgage and expiration of the time for redemption; or
- (iii) after termination of contract to convey the property, provided that if the person holding the real property after the expiration of the time for redemption or termination is a tenant, the person has received:
- (A) at least one month's written notice to vacate no sooner than one month after the expiration of the time for redemption or termination, provided that the tenant pays the rent and abides by all terms of the lease; or
- (B) at least one month's written notice to vacate no later than the date of the expiration of the time for redemption or termination, which notice shall also state that the sender will hold the tenant harmless for breaching the lease by vacating the premises if the mortgage is redeemed or the contract is reinstated:
- (2) any person holds over real property after termination of the time for which it is demised or leased to that person or to the persons under whom that person holds possession, contrary to the conditions or covenants of the lease or agreement under which that person holds, or after any rent becomes due according to the terms of such lease or agreement; or
- (3) any tenant at will holds over after the termination of the tenancy by notice to quit.
- **Subd. 2. Retaliation defense.** It is a defense to an action for recovery of premises following the alleged termination of a tenancy by notice to quit for the defendant to prove by a fair preponderance of the evidence that:
- (1) the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States; or

(2) the alleged termination was intended in whole or part as a penalty for the defendant's good faith report to a governmental authority of the plaintiff's violation of a health, safety, housing, or building code or ordinance.

If the notice to quit was served within 90 days of the date of an act of the tenant coming within the terms of clause (1) or (2) the burden of proving that the notice to quit was not served in whole or part for a retaliatory purpose shall rest with the plaintiff.

- **Subd. 3. Rent increase as penalty.** In any proceeding for the recovery of premises upon the ground of nonpayment of rent, it is a defense if the tenant establishes by a preponderance of the evidence that the plaintiff increased the tenant's rent or decreased the services as a penalty in whole or part for any lawful act of the tenant as described in subdivision 2, providing that the tenant tender to the court or to the plaintiff the amount of rent due and payable under the tenant's original obligation.
- **Subd. 4. Nonlimitation of landlord's rights.** Nothing contained in subdivisions 2 and 3 limits the right of the landlord pursuant to the provisions of subdivision 1 to terminate a tenancy for a violation by the tenant of a lawful, material provision of a lease or contract, whether written or oral, or to hold the tenant liable for damage to the premises caused by the tenant or a person acting under the tenant's direction or control.
- **Subd. 5. Combining allegations.** (a) An action for recovery of the premises may combine the allegation of nonpayment of rent and the allegation of material violation of the lease, which shall be heard as alternative grounds.
- (b) In cases where rent is outstanding, a tenant is not required to pay into court the amount of rent in arrears, interest, and costs as required under **section 504B.291** to defend against an allegation by the landlord that the tenant has committed a material violation of the lease.
- (c) If the landlord does not prevail in proving material violation of the lease, and the landlord has also alleged that rent is due, the tenant shall be permitted to present defenses to the court that the rent is not owing. The tenant shall be given up to seven days of additional time to pay any rent determined by the court to be due. The court may order the tenant to pay rent and any costs determined to be due directly to the landlord or to be deposited with the court.