

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT
FIRST DIVISION: MINNEAPOLIS
CASE TYPE: UNLAWFUL DETAINER
(EVICTION)

Plaintiff (Landlord),

v.

Defendant (Tenant).

NOTICE OF MOTION AND
ORDER FOR EXPUNGEMENT
OF EVICTION RECORD

Pov. Law Form No. Exp-1HENN
(April 2019)

Case No. _____

PLEASE TAKE NOTICE that at _____ a.m./p.m. on _____, the Defendant will bring the following motion on for hearing at Room _____, Hennepin County Government Center, 300 South 6th Street, Minneapolis, MN 55487-0713.

NOTICE OF MOTION

PLEASE TAKE NOTICE that at _____ a.m./p.m. on _____, the Defendant will bring the following motion on for hearing before the Honorable _____, Referee or Judge of District Court, at the following location: _____.

MOTION

1. Defendant asks the Court for the immediate expungement of this eviction case court file.

2. The Court may order expungement upon finding that “the plaintiff’s case is sufficiently without basis in fact or law . . . 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. § 484.014, subd. 2.

a. The Plaintiff’s case is sufficiently without basis in fact or law:

b. Expungement is clearly in the interests of justice:

c. The interests of justice are not outweighed by the public's interest in knowing about the record:

3 Expungement is mandatory for an eviction case commenced solely on the grounds provided in Minn. Stat. § 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 Minn. Stat. § 504B.285, subdivision 1, clause (1), to vacate on a date prior to commencement of the eviction case. Minn. Stat. § 484.014, subd. 3.

- a. I moved on _____ before Plaintiff filed this case, or
- b. I am a tenant and did not receive a proper lease termination notice under Minn. Stat. § 504B.285.

4. Courts have inherent authority to perform a judicial action when the relief requested "is necessary to the performance of a judicial function as contemplated in [the] state constitution." *In re: Clerk of Court's Compensation for Lyon County v. Lyon County Commissioners*, 241 N.W.2d 781, 786 (Minn. 1976). Minn. Const. Art. 1 § 8 provides "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

Courts also have inherent authority to control their own records, along with the equitable power to prevent unfairness to individuals. *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981). The court "must decide whether expungement will yield a benefit to the petitioner commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing, enforcing and monitoring an expungement order." *Id.*

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

- (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).

Id. (the court 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).

Minnesota statutory law also recognizes the court’s inherent power to expunge court files. Minn. Stat. § 504B.345, Subd. 1(c)(2) provides 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.” (emphasis added).

The Court should expunge this file within its inherent authority because (1) expungement is necessary to the performance of the judicial function of effecting justice, (2) the burden on the court in issuing an expungement order in this action is minimal, and (3) the benefits of expungement to me are equal to, or greater than, any disadvantage to the public from elimination of the record and any burden on the court in expunging the record of this case for the following reasons:

5. This case record is older than cases scheduled for destruction under the Minnesota Judicial Branch Court Services Division District Court Record Retention Schedule. http://www.mncourts.gov/mncourtsgov/media/scao_library/MN-District-Court-Record-Retention-Schedule.pdf

- a. No money judgment was ordered in this case and
 - (1) the case file was closed over one year ago, *id.* at 9, ***or***
 - (2) following final disposition of the case, there was financial activity in the case, and it has been three years since the fiscal year of the final disposition. *Id.*
- b. A money judgment was ordered in this case, there are no outstanding debts, and the case is over ten years old. *Id.*

6. Under Minn. R. Civ. P. 11, I certify that, to the best of my knowledge:
- (a) this document is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 - (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
 - (c) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery;
 - (d) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief; and
 - (e) this document does not include any restricted identifiers and that all restricted identifiers have been submitted in a confidential manner as required by Minn. R. Gen. Prac. 11.

I know that I may be fined or sanctioned by the court if this certification is false.

7. Under Minn. Stat. § 358.116, I declare under penalty of perjury that everything I have stated in this document is true and correct.

Date	Signature
County and State Where Document Is Signed	Name: _____
County: _____	Address: _____
State: _____	City, State, Zip: _____
	Telephone: _____

ORDER

1. The party moving for expungement shall serve copies of the Notice of Motion and Motion on all parties to the case under Minnesota Rules of Civil Procedure 5 by no later than 10 days before the hearing.

2. The party moving for expungement shall file affidavits of service with the District Court Administrator by 3:00 pm, three days prior to the hearing. Failure to file these documents in a timely manner may be cause to strike the hearing.

Recommended By:

Date

Housing Court Referee

Date

Judge of District Court