

STATE OF MINNESOTA
COUNTY OF _____

DISTRICT COURT
JUDICIAL DISTRICT
DIVISION: _____
CASE TYPE: UNLAWFUL DETAINER
(EVICTION)

_____,
Plaintiff (Landlord),
v.

_____,
Defendant (Tenant).

**NOTICE OF MOTION AND
MOTION FOR
DISPOSITION OF PROPERTY
HELD ON-SITE**

Pov. Law Form No. P-2 (March 2017)

Case No. _____

NOTICE OF MOTION

TO: _____

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

_____, being duly sworn, moves the Court as follows:

1. Since _____, Defendant has been a residential tenant at _____ ("the premises") under written oral rental agreement with _____, providing for rental of \$ _____ per month.

2. Plaintiff is the _____ of the premises.
Plaintiff's address is _____.

3. Plaintiff commenced this action alleging that _____

_____.

4. On _____, a hearing was held before the Honorable

_____. The court found that _____

_____.

5. The court ordered that the Writ of Recovery of the premises and order to vacate be stayed until _____.

6. On _____, the Clerk of Court issued the Writ and entered judgement for Plaintiff.

7. On _____, Plaintiff took the following action to remove Defendant's personal property on the premises, and stored the property on the premises: _____

_____.

Grounds for Relief

8. The Court should retain jurisdiction in this unlawful detainer action regarding removal and storage of property pursuant to a writ of recovery. *See* Minn. Stat. § 504B.365, subd. 4, formerly § 566.17.

9. Plaintiff removed Defendant's property from the premises without the presence or participation of the sheriff, licensed police officer, or community crime prevention licensed police officer, in violation of Minn. Stat. § 504B.365, subd. 3(d).

10. Plaintiff did not give proper notice to Defendant before removing Defendant's property, in violation of Minn. Stat. § 504B.365, subd. 3(f), as follows:

a. Plaintiff did not send written notice to Defendant by first class mail, stating the date and approximate time for removal of Defendant, Defendant's family, and Defendant's personal property from

the premises, and that Defendant and Defendant's property would be removed from the premises if Defendant had not vacated the premises by the time stated in the notice.

- b. Plaintiff did not mail the notice as soon as Plaintiff knew the date and approximate time the sheriff or police officer was scheduled to enforce the writ of recovery.
- c. Plaintiff did not make a good faith effort to notify Defendant by telephone.

11. Plaintiff did not properly prepare and mail an inventory of Defendant's property, in violation of Minn. Stat. § 504B.365, subd. 3(d), as follows:

- a. Plaintiff did not prepare an inventory of Defendant's property including a listing of the items of personal property and a description of the condition of the property, the date, the signature of Plaintiff or Plaintiff's agent, the name and telephone number of a person authorized to release the property, and the name and badge number of the sheriff or officer.
- b. Plaintiff did not prepare, sign and date the inventory in the presence of the sheriff or police officer.
- c. Plaintiff did not mail a copy of the inventory to the address Defendant provided to Plaintiff, or Defendant's last known address.

12. Plaintiff failed to allow Defendant to retake possession of Defendant's property within 24 hours after Defendant made a written demand for return of the property, in violation of Minn. Stat. §§ 504B.365, subd. 3(d), 504B.271.

13. Plaintiff intends to sell Defendant's property without retaining it for 60 days, in violation of Minn. Stat. §§ 504B.365, subd. 3(d), 504B.271.

14. Plaintiff did not give Defendant proper notice of sale, in violation of Minn. Stat. §§ 504B.365, subd. 3(d), 504B.271, as follows:

- a. Plaintiff did not serve Defendant 14 days before the sale with a written notice of sale, either by personal service, or by sending written notice by certified mail, return receipt requested, to Defendant's usual place of abode or last known address.
- b. Plaintiff did not post the notice of sale in a conspicuous place on the premises for at least two weeks.

15. Plaintiff did not properly care for Defendant's property, causing theft or damage to the property, in violation of Minn. Stat. §§ 504B.365, subd. 3(d), 504B.271.

16. Plaintiff did not properly sell or dispose of Defendant's property, in violation of Minn. Stat. §§ 504B.365, subd. 3(d), 504B.271.

17. Plaintiff's and _____'s actions constitute consumer fraud and deceptive trade practices, in violation of Minn. Stat. §§ 325F.68-325F.70, 8.31, 325D.43-325D.48. *See Love v. Amsler*, 441 N.W.2d 555, 557-59 (Minn. Ct. App. 1989).

18. Defendant took the following action to notify Plaintiff of Defendant's intent to bring this motion: _____

Defendant Requests an Order as Follows:

1. Retaining jurisdiction to consider Defendant's claims.
2. Joining _____ as a necessary party Plaintiff under Minnesota Rules of Civil Procedure 19.01.
3. Enjoining Plaintiff and _____ from selling Defendant's property.
4. Ordering Plaintiff and _____ to return Defendant's property to Defendant.
5. Enjoining Plaintiff from committing consumer fraud and deceptive trade practices, in violation of Minn. Stat. §§ 325F.68-325F.70, 8.31, 325D.43-325D.48. *See Love v. Amsler*, 441 N.W.2d 555, 557-59 (Minn. Ct. App. 1989).
6. Awarding Defendant treble damages or \$500.00, whichever is greater, under Minn. Stat. §§ 504B.365, subd. 5, 504B.231.
7. Awarding Defendant actual damages and \$1,000.00 in punitive damages, under Minn. Stat. §§ 504B.365, subd. 3(d), 504B.271.
8. Awarding Defendant costs, disbursements, and reasonable attorney's fees pursuant to:
 - a. Minn. Stat. §§ 504B.365, subd. 5, 504B.231; *Follis v. State Armory Building Commission*, No. A14-2198, 2015 WL 7940309 (Minn. Ct. App. Dec. 7, 2015) (unpublished).

- b. Minn. Stat. §§ 504B.365, subd. 3(d), 504B.271.
 - c. Minn. Stat. § 504B.172, because my lease began on or after August 1, 2011, or was renewed on or after August 1, 2012, it provides for attorney fees to Plaintiff's or the landlord's attorneys, so I am entitled to attorney fees if I prevail.
 - 9. Other: _____
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10. Granting Defendant such other and further relief as may be just and equitable in the circumstances.

11. 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.

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

Date
County and State Where
Document Is Signed
County: _____
State: _____

Signature
Name: _____
Address: _____
City, State, Zip: _____
Telephone: _____