

**Pandemic Eviction Claims and Defenses and Other Housing Claims in Minnesota**

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Larry McDonough  
Attorney at Law and Adjunct Professor of Law

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Pandemic Eviction Claims and Defenses and Other Housing Claims in Minnesota is a major revision and update to Pandemic Eviction Defense and Tenant Claims in Minnesota. The latter was written when [Emergency Executive Order 20-79](#) was in effect, while the former adds [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#).

Pandemic Eviction Claims and Defenses and Tenant Claims in Minnesota is a companion to [Residential Eviction Defense and Tenant Claims in Minnesota](#). While I litigated many of the cases in the latter, the former represents the work of the next generation of legal aid and volunteer attorneys.

Pandemic Eviction Claims and Defenses and Other Housing Claims in Minnesota contains more quotes from court decisions for a couple of reasons. First, there are fewer decisions. Second, and more importantly, there are the first decisions to interpret the state and federal laws, orders, and rules affecting pandemic evictions.

Attorneys new to eviction actions and landlord and tenant law should use Residential Eviction Defense and Tenant Claims in Minnesota to become familiar with the law.

Thanks to all of the attorneys who have litigated these cases and submitted decisions and research. Thanks also to Legal Services State Support for supporting creation of this manual.

Larry McDonough  
Attorney at Law and Adjunct Professor of Law  
651-398-8053  
[mcdon056@umn.edu](mailto:mcdon056@umn.edu)

Housing Law in Minnesota  
<http://povertylaw.homestead.com/HousingLawinMinnesota.html>

## AUTHOR

Lawrence (Larry) McDonough has been a legal services and pro bono civil litigation attorney since 1983. He worked in civil legal services for 30 years and served as Pro Bono Litigation Counsel at Dorsey & Whitney for seven years, and later served as Senior Minnesota Fellow with the Lawyers' Committee for Civil Rights Under Law, helping to coordinate eviction defense and tenant protection programs in Minnesota through training and mentoring attorneys and law students and policy advocacy. He now serves as Housing Rights Attorney with the Housing Justice Center in Saint Paul, Minnesota.

He has represented residential and commercial tenants and landlords, with over 10,000 clients, 250 trials, 1,000 motion hearings, and scores of appellate hearings under his belt. Over the years, he has become a state and national expert in housing law. He contributed to almost all of the landlord and tenant statutes enacted since 1986. He co-founded Minnesota's Annual Housing Law Institute, authored Residential Eviction Defense in Minnesota, the most viewed manual at <https://www.projusticemn.org/>, as well as many journal articles on landlord and tenant law. He maintains the Housing Law in Minnesota website.

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

Larry created housing law clinics at the University of Minnesota Law School the Fourth District Housing Court in Hennepin County, both of which being the longest running law school and court clinics dedicated to housing law in Minnesota. He also has taught at all of the law schools in the Twin Cities in both academic and clinical courses, and regularly presents at seminars both in the state and around the country.

He has received awards from Mitchell Hamline School of Law, William Mitchell College of Law, Minnesota State Bar Association, Minnesota Law & Politics, Mid-Minnesota Legal Assistance, Minnesota Justice Foundation, National Lawyers Guild Minnesota Chapter, University of St. Thomas School of Law, Association of Community Organizations for Reform Now, Minnesota Legal Services Coalition, and the Hennepin County District Court. A complete bio along with a list of publications, presentations, litigation, legislation, media appearances, and awards is posted at <http://povertylaw.homestead.com/Biolarrymcdonough.html>.

Larry McDonough

Attorney at Law and Adjunct Professor of Law

651-398-8053

[mcdon056@umn.edu](mailto:mcdon056@umn.edu)

Housing Law in Minnesota

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

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[OnLine Advice: Minnesota Legal Advice Online \(MLAO\)](#)

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J. Referral List for Clients

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## CHAPTER I: EARLY PANDEMIC EMERGENCY EXECUTIVE ORDERS, LAWS AND COURT ORDERS

### A. Minnesota Emergency Executive Orders

#### 1. Earlier Emergency Executive Orders

##### a. Emergency Executive Order 20-14

Minnesota Governor Tim Walz issued [Emergency Executive Order 20-14](#) on March 23, 2020, suspending evictions except “where the tenant seriously endangers the safety of other residents or for violations of [Minnesota Statutes 2019, section 504B.171, subdivision 1](#) [certain types of illegal activity].”

Nonpayment of rent was not an exception. Tenants still would owe the rent, but landlords cannot evict those who cannot pay while the order is in effect.

It began March 24, 2020 at 5:00 p.m. and would continue for the duration of the peacetime emergency declared in [Emergency Executive Order 20-01](#) or until this Emergency Executive Order is rescinded. [Emergency Executive Order 20-79](#) supplemented and replaced [Emergency Executive Order 20-14](#), effective August 4, 2020.

Included in the suspension were residential landlords, property owners, mortgage holders, or other persons entitled to recover residential premises concerning filing eviction actions and terminating residential leases, and officers holding writs of recovery concerning executing writs not limited to residential properties.

Financial institutions holding home mortgages were (1) *requested* to implement an immediate moratorium on foreclosures and evictions due to the pandemic, and (2) *strongly urged* not to impose late fees or other penalties for late mortgage payments due to the pandemic

##### b. Emergency Executive Order 20-73

[Emergency Executive Order 20-73](#) expanded the eviction suspension exception to add where the tenant seriously endangers the safety of others on the premises, including the common area and the curtilage of the premises, if the serious endangerment of others who are not residents is a material violation of the lease. Nonpayment of rent was not an exception. Tenants still would owe the rent, but landlords cannot evict those who cannot pay while the order is in effect. [Emergency Executive Order 20-79](#) rescinded [Emergency Executive Orders 20-14](#) and [20-73](#) and replaced them with a new eviction suspension, effective August 4, 2020.

#### 2. Emergency Executive Order 20-79

[Emergency Executive Order 20-79](#) rescinded Emergency Executive Orders [20-14](#) and

[20-73](#) and replaced them with a new eviction suspension, effective August 4, 2020. It remained in effect through June 29, 2021 until it was rescinded by Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5. *See* discussion, *infra*, at [Ch. VII](#).

a. Text

[Emergency Executive Order 20-79](#);

Rescinding Emergency Executive Orders [20-14](#) and [20-73](#)

Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency

I, Tim Walz, Governor of the State of Minnesota, by the authority vested in me by the Constitution and applicable statutes, issue the following Executive Order:

On March 23, 2020, I issued [Executive Order 20-14](#), which suspended evictions, writs of recovery, and tenancy terminations during the peacetime emergency (“[Executive Order 20-14](#)”). The purpose of [Executive Order 20-14](#) was to protect the public health by ensuring that Minnesotans were stably housed during the COVID-19 pandemic. On June 5, 2020, I issued [Executive Order 20-73](#), which clarified the application of [Executive Order 20-14](#).

The protections provided by [Executive Order 20-14](#) and [Executive Order 20-73](#) have been crucial to protect public health by promoting Minnesotans’ housing stability and preventing displacement during the COVID-19 pandemic. We have continued to slowly and safely reopen Minnesota’s economy and, in line with those actions, recognize that tenants may begin to move more safely. At the same time, I recognize that COVID-19’s economic impact continues to influence the ability of tenants and homeowners to pay their rent and mortgages. Over 800,000 Minnesotans have applied for unemployment insurance since March 16, 2020.

Today I approved the release of \$100 million in funds for a program to provide housing assistance to prevent evictions and maintain housing stability for Minnesotans in the face of economic challenges due to COVID-19. To continue to strike a balance between the crucial importance of maintaining public health and stability for residential tenants, the economic impacts of the COVID-19 pandemic on tenants, and the interests of housing providers to maintain and protect their properties, I am modifying the eviction protections to allow evictions in additional limited circumstances. In addition, I am requiring landlords to give residential tenants a 7-day notice of intent to file an eviction to help mitigate the impact upon residential tenants and encourage resolutions without court involvement.

For these reasons, I order as follows:

1. Effective August 4, 2020 at 12:00 am, Executive Orders [20-14](#) and [20-73](#) are rescinded. Paragraphs 2 through 13 of this Executive Order are effective as of August 4, 2020 at 12:00 am.

2. The ability of property owners, mortgage holders, or other persons entitled to recover residential premises to file an eviction action on the grounds that a residential tenant remains in the property after a notice of termination of lease, after a notice of nonrenewal of a lease, after a material violation of a lease, after the termination of the redemption period for a residential foreclosure, or after nonpayment of rent, is suspended. Nothing in this Executive Order relieves a tenant's obligation to pay rent. This suspension does not include eviction actions where the tenant:

a. Seriously endangers the safety of other residents;

b. Violates [Minnesota Statutes 2019, section 504B.171, subdivision 1](#);

c. Remains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of this Executive Order; or

d. Materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises:

I. Seriously endangers the safety of others; or

ii. Significantly damages property.

3. Residential landlords must not issue notices of termination of lease or nonrenewal of lease or terminate residential leases during the pendency of the peacetime emergency unless the termination or nonrenewal is based upon one of the grounds permitted by paragraph 2.

4. Paragraph 3 does not apply to residential landlords who issue a termination of lease or nonrenewal of lease due to the need to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant.

5. All officers who hold a writ of recovery of premises and order to vacate must cease executing such writs as required by [Minnesota Statutes 2019, section 504B.365, subdivision 1](#), with the exception of:

a. Writs designated as a priority execution under [Minnesota Statutes 2019, section 504B.365, subdivision 2](#);

b. Writs issued as a result of an eviction action judgment entered prior to the enactment of [Executive Order 20-14](#) on March 24, 2020 at 5:00 pm; or

c. Writs issued as a result of an eviction action permitted by paragraph 2.

6. All property owners, mortgage holders, or other persons seeking possession on grounds permitted by this Executive Order must provide a written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer.

7. Nothing in this Executive Order is intended to modify the relief available, including exclusion from the dwelling, in an order for protection issued under [Minnesota Statutes 2019, section 518B.01](#), or in a domestic abuse no contact order issued under [Minnesota Statutes 2019, section 629.75](#).

8. Financial institutions holding home mortgages are requested to implement an immediate moratorium on all pending and future foreclosures when the foreclosure arises out of a substantial decrease in income or substantial out of pocket medical expenses caused by the COVID-19 pandemic, or any local, state, or federal governmental response to COVID-19. Financial institutions are also strongly urged not to impose late fees or other penalties for late mortgage payments related to the COVID-19 pandemic.

9. I strongly encourage property owners, mortgage holders, or other persons entitled to recover residential premises to work with tenants to reach amicable resolutions where possible without filing eviction actions. I strongly encourage tenants who are able to pay their rent to continue to do so.

10. Pursuant to [Minnesota Statutes 2019, section 12.45](#), a person who willfully violates paragraphs 2, 3, and 5 of this Executive Order is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000, or by imprisonment for not more than 90 days. The Attorney General may also seek any relief available pursuant to [Minnesota Statutes 2019, section 8.31](#).

11. This Executive Order does not apply to properties on federal tribal trust land.

12. Nothing in this Executive Order creates grounds for eviction or lease termination beyond what is provided for by Minnesota Statutes.

13. Nothing in this Executive Order may in any way restrict state or local authority to order any quarantine, isolation, or other public health measure that may compel an individual to remain physically present in a particular residential real property.



14. [Executive Order 20-14](#) and [Executive Order 20-73](#) remain in full force and effect until superseded by this Executive Order according to its terms.

Pursuant to [Minnesota Statutes 2019, section 4.035, subdivision 2](#), and [section 12.32](#), this Executive Order is effective immediately upon approval by the Executive Council. It remains in effect until the peacetime emergency declared in Executive Order 20-01 is terminated or until it is rescinded by proper authority.

A determination that any provision of this Executive Order is invalid will not affect the enforceability of any other provision of this Executive Order. Rather, the invalid provision will be modified to the extent necessary so that it is enforceable.

Signed on July 14, 2020.  
Tim Walz  
Governor

Filed According to Law:  
Steve Simon  
Secretary of State

Approved by the Executive Council on July 14, 2020:  
Alice Roberts-Davis  
Secretary, Executive Council Filed

July 14, 2020  
Office of the Minnesota  
Secretary of State  
Steve Simon

b. Highlights

(1) Exceptions

[Emergency Executive Order 20-79 Paragraphs 2-3](#) provided:

2. The ability of property owners, mortgage holders, or other persons entitled to recover residential premises to file an eviction action on the grounds that a residential tenant remains in the property after a notice of termination of lease, after a notice of nonrenewal of a lease, after a material violation of a lease, after the termination of the redemption period for a residential foreclosure, or after nonpayment of rent, is suspended. Nothing in this Executive Order relieves a tenant's obligation to pay rent. This suspension does not include eviction actions where the tenant:

- a. Seriously endangers the safety of other residents;
- b. Violates [Minnesota Statutes 2019, section 504B.171, subdivision 1](#);
- c. Remains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of this Executive Order; or
- d. Materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises:
  - i. Seriously endangers the safety of others; or
  - ii. Significantly damages property.

3. Residential landlords must not issue notices of termination of lease or nonrenewal of lease or terminate residential leases during the pendency of the peacetime emergency unless the termination or nonrenewal is based upon one of the grounds permitted by paragraph 2.

[Emergency Executive Order 20-79 at 2](#).

[Paragraph 4](#) allows residential landlords to “issue a termination of lease or nonrenewal of lease due to the *need* to move the property owner or property owner’s family member(s) into the property and where the property owner or property owner’s family member(s) move into the property within 7 days after it is vacated by the tenant.” *Id.* (emphasis added).

Nonpayment of rent is not an exception. Tenants still would owe the rent, but landlords cannot evict those who cannot pay while the order is in effect.

(2) Notice of Intent to File an Eviction Action

[Paragraph 6](#) added that all property owners, mortgage holders, or other persons seeking possession on grounds permitted by this Executive Order must provide a written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer. *Id. at 3*.

(3) Officers Enforcing Writs of Recovery

[Paragraph 5](#) provided:

All officers who hold a writ of recovery of premises and order to vacate must cease executing such writs as required by [Minnesota Statutes 2019, section 504B.365, subdivision 1](#), with the exception of:

- a. Writs designated as a priority execution under [Minnesota Statutes 2019, section 504B.365, subdivision 2](#);
- b. Writs issued as a result of an eviction action judgment entered prior to the enactment of [Executive Order 20-14](#) on March 24, 2020 at 5:00 pm; or
- c. Writs issued as a result of an eviction action permitted by paragraph 2.

[Id. at 2.](#)

[Paragraph 5 of Emergency Executive Order 20-79](#) is not limited to residential rental eviction writs, so it also limits execution of eviction writs for commercial tenancies and post mortgage foreclosure and contract for deed cancellations to the exceptions in [Paragraphs 2-4 of Emergency Executive Order 20-79](#).

Since law enforcement has liability for violating Executive Orders, officers should require landlords to show documentation that the writ fits within the exceptions.

(4) Orders for Protection

[Paragraph 7](#) provided “Nothing in this Executive Order is intended to modify the relief available, including exclusion from the dwelling, in an order for protection issued under [Minnesota Statutes 2019, section 518B.01](#), or in a domestic abuse no contact order issued under [Minnesota Statutes 2019, section 629.75](#).” [Id. at 3.](#)

(5) Mortgage Foreclosure

[Paragraph 8](#) provided: “Financial institutions holding home mortgages are requested to implement an immediate moratorium on all pending and future foreclosures when the foreclosure arises out of a substantial decrease in income or substantial out of pocket medical expenses caused by the COVID-19 pandemic, or any local, state, or federal governmental response to COVID-19. Financial institutions are also strongly urged not to impose late fees or other penalties for late mortgage payments related to the COVID-19 pandemic.” [Id.](#)

[Paragraph 5 of Emergency Executive Order 20-79](#) is not limited to residential rental eviction writs, so it also limits execution of eviction writs for commercial tenancies and post mortgage foreclosure and contract for deed cancellations to the exceptions in [Paragraphs 2-4 of Emergency Executive Order 20-79](#).

(5a) Commercial Tenancies

[Paragraph 5 of Emergency Executive Order 20-79](#) is not limited to residential rental eviction writs, so it also limits execution of eviction writs for commercial tenancies and post

mortgage foreclosure and contract for deed cancellations to the exceptions in [Paragraphs 2-4 of Emergency Executive Order 20-79](#).

(6) Violations

[Paragraph 10](#) provided: “Pursuant to [Minnesota Statutes 2019, section 12.45](#), a person who willfully violates [paragraphs 2, 3, and 5 of this Executive Order](#) is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed \$1,000, or by imprisonment for not more than 90 days. The Attorney General may also seek any relief available pursuant to [Minnesota Statutes 2019, section 8.31](#).” *Id.*

(7) Federal Tribal Trust Land

[Paragraph 11](#) provided: “This Executive Order does not apply to properties on federal tribal trust land.” *Id.*

(8) No Creation of New Eviction Grounds

[Paragraph 12](#) provided: “Nothing in this Executive Order creates grounds for eviction or lease termination beyond what is provided for by Minnesota Statutes.” *Id.*

(9) No Restriction of State or Local Authority

[Paragraph 13](#) provided: “Nothing in this Executive Order may in any way restrict state or local authority to order any quarantine, isolation, or other public health measure that may compel an individual to remain physically present in a particular residential real property.” *Id.*

(10) Definitions

[Emergency Executive Order 20-79](#) did not include definitions of key terms.

(a) Minn. Stat. § 504B.001

For statutory definitions, *see* [Minn. Stat. § 504B.001](#). Residential Eviction Defense and Tenant Claims in Minnesota contains a discussion of [Minn. Stat. § 504B.001](#) definitions and types of tenancies. Residential Eviction Defense and Tenant Claims in Minnesota at [I.E.](#) and [I.D.](#)

(b) Residential Tenants

*See* [Minn. Stat. § 504B.001, Subd. 12](#); Residential Eviction Defense and Tenant Claims in Minnesota at [I.E.1.](#) (residential tenants) and [I.D.](#) (types of tenancies).

In [\*Smith v. Temple Corp., Inc.\*, No. 69DU-CV-20-1845 \(Minn. Dist. Ct. 6th Dist. Mar. 3, 2021\) \(Referee Schulte\) \(Appendix PED-34b\)](#), in an emergency tenant remedies action under [Minn. Stat. § 504B.381](#), on the issue of whether certain plaintiffs were residential tenants, the court found that one plaintiff had a signed lease regardless of the landlord's claim of an unauthorized occupant, and two plaintiffs did not have a written leases but agreed to work for the landlord and did not pay rent.

In [\*Bina v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-20-12615 \(Minn. Dist. Ct. 4th Dist. Oct. 29, 2020\) \(Appendix PED-28\)](#), the plaintiff claimed the lease was commercial and the defendant claimed it was both commercial and residential. The parties used a form lease titled Minnesota Standard Residential Lease that listed a company and two individuals as tenants, and the plaintiff included all three as defendants. Defendant A. S. testified that he lived on the property. The court concluded that he was a residential tenant and the plaintiff could not evict for nonpayment of rent and the water bill.

In [\*Tish v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-20-1651 \(Minn. Dist. Ct. 4th Dist. Nov. 16, 2020\) \(Judge Sande\) \(Appendix PED-51\)](#), the parties were romantic partners until their relationship deteriorated and the defendant obtained an order for protection against the plaintiff who owned the home. The plaintiff filed an eviction action and both parties removed a referee. The plaintiff argued that the defendant was not a tenant because they never signed a lease and she never paid rent. The defendant argued and the court concluded that she was a tenant at will since she resided on the property for two years and she was entitled to a three-month lease termination notice under [Minn. Stat. § 504B.135](#) that the plaintiff did not give. The court dismissed the action.

In [\*\\_\\_\\_\\_\\_ v. LMC NE Minneapolis Holdings LLC\*, No. 27-CV-HC-21-227 \(Minn. Dist. Ct. 4th Dist. May 6, 2021\) \(Referee Houghtaling\) \(Appendix PED-56\)](#), the defendant landlords disabled the key fob that excluded the plaintiff from the property. The plaintiff filed a lockout action and defendants argued that she was not a tenant. The court found that the plaintiff was a tenant under [Minn. Stat. § 504B.001, Subd. 12](#), noting (1) the defendants signed a lease with the plaintiff's former roommate and partner, (2) the plaintiff was the victim of an abusive relationship with the former roommate, (3) the plaintiff credibly testified that she paid rent to the former roommate, (4) while the defendants' manager testified she did not know of the plaintiff, documents showed that she did, (5) the plaintiff used the property address on her driver's license, (6) the plaintiff received mail at the property, (7) the defendants' would have sorted mail, received packages, and seen the plaintiff on the property for two years, and (8) disabling the key fob had the same effect as changing the locks. The court concluded that the defendants actually or constructively excluded the plaintiff from the property by changing the key fob. The court ordered the defendants to enable the key fob and to pay the plaintiff \$500 under [Minn. Stat. § 504B.231](#), \$200 in costs under [Minn. Stat. § 549.02](#), and attorney's fees under [Minn. Stat. § 504B.271](#).

- c. Emergency Executive Order 20-79 is Constitutional

[Emergency Executive Order 20-79](#) is Constitutional. [Heights Apartments, LLC, and Walnut Trails, LLLP v. Walz, No. 20-CV-2051, 2020 WL 7828818, Order on Motion to Dismiss and Motion for Preliminary Injunction \(D. Minn. Dec. 31, 2020\) \(Judge Brasel\) \(Appendix PED-21\)](#).

In [State v. Mostad, No. 58-CV-20-175 \(Minn. Dist. Ct. 10th Dist. April 6, 2020\) \(Appendix PED-20\)](#), the court enjoined the landlord interrupting utility service to the tenant, in violation of [Emergency Executive Order 20-14](#), concluding that the Attorney General had the power to enforce it. Subsequently, in [State v. Mostad, No. 58-CV-20-175 \(Minn. Dist. Ct. 10th Dist. Mar. 15, 2021\) \(Appendix PED-20a\)](#), the court found that the landlord disconnected electricity on April 2, 2020, the Attorney General contacted the landlord on April 3 and filed this action that day under [Minn. Stat. § 504B.381](#) (emergency tenant remedies action), and the landlord restored service on April 4. *Amended Findings of Fact, Conclusions of Law, and Order* at 2-3. The court concluded that the Attorney General had standing to bring the action, the landlord violated [Emergency Executive Order 20-14](#), the Attorney General did not have standing to seek damages under [Minn. Stat. § 504B.221](#) for interruption of utilities, the Attorney General did have standing to enforce health, housing and building maintenance codes under [Minn. Stat. § 504B.381](#) (emergency tenant remedies action) but the Attorney General did not satisfy the statutory prefiling notice, Attorney General enforcement of [Emergency Executive Order 20-14](#) was not an unlawful taking under the United States and Minnesota Constitutions, and a \$25,000 penalty was not warranted.

3. Expiration of Emergency Executive Orders Did Not Extinguish Rights and Defenses Accrued under Them

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) terminated the executive orders but did not extinguish rights and defenses accrued under them. *Fairmont Housing and Redevelopment Authority v. Winter*, 2021 WL 5441936, \_\_\_\_ N.W.2d \_\_\_\_ (Minn. Ct. App. 2021).

B. Coronavirus Aid, Relief, and Economic Security (CARES) Act §4024

1. Earlier Provisions

The Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024, codified at [15 U.S.C. § 9058](#), created an eviction moratorium operated by restricting lessors of covered properties (discussed in more detail below) from filing new eviction actions for non-payment of rent, and also prohibits “charg[ing] fees, penalties, or other charges to the tenant related to such nonpayment of rent.” The federal eviction moratorium took effect on March 27, 2020 and continued for 120 days until July 25, 2020. The federal eviction moratorium did not affect cases (1) that were filed before the moratorium took effect or that are filed after it sunsets, (2) that involve non-covered tenancies (see below), or (3) where the eviction is based on another reason besides nonpayment of rent or nonpayment of other fees or charges.

An affected landlord could not evict for nonpayment of rent or fees until after July 25, 2020, issue a notice to vacate for any reason until after July 25, 2020, or charge late fees for late rent that accrues during the period from March 27, 2020 through July 25, 2020

See [Sec. 4024. Temporary Moratorium on Eviction Filings \(National Consumer Law Center Mar. 26, 2020\)](#); [Major Consumer Protections Announced in Response to COVID-19 \(National Consumer Law Center Aug. 13, 2020\)](#).

For cases, *see* discussion, *infra*, at [III.B.1.b](#).

## 2. Current Notice Requirement for Covered Properties

The federal moratorium also provided that a lessor (of a covered property) may not evict a tenant after the moratorium expires except on 30 days' notice that may not be given until after the moratorium period. This provision is not limited to nonpayment of rent and has no expiration date. [15 U.S.C. § 9058](#). See [Sec. 4024. Temporary Moratorium on Eviction Filings \(National Consumer Law Center Mar. 26, 2020\)](#).

For cases, *see* discussion, *infra*, at [III.B.1.b](#).

## 3. Covered Properties

A covered dwelling a dwelling occupied by a tenant pursuant to a residential lease or without a lease or with a lease terminable under state law and is on or in a covered property.

The Act defines a “covered property” as a property that: (1) participates in a “covered housing program” as defined by the Violence Against Women Act (VAWA) (as amended through the 2013 reauthorization); (2) participates in the “rural housing voucher program under section 542 of the Housing Act of 1949”; (3) has a federally backed mortgage loan; or (4) has a federally backed multifamily mortgage loan.

For cases, *see* discussion, *infra*, at [III.B.1.b](#).

### a. Subsidized Housing

Properties that “participate in” a subsidy program covered by the Violence Against Women Act (VAWA”) include:

- Section 8 Housing Choice Voucher (“HCV”) or VASH (HUD-Veterans Affairs) vouchers
- Section 8 Project-Based Voucher (PBV) units
- Public housing units
- HOME (HOME Investment Partnership) units
- HOPWA (Housing Opportunities for Persons with AIDS) units
- Permanent Supportive Housing (PSH) units

- Tenants that use a PSH or Shelter Plus Care voucher
- Federal Low Income Housing Tax Credit (LIHTC or “tax credit”) units
- Properties receiving a project-based subsidy through HUD
- Properties receiving a project-based subsidy through the U.S. Department of Agriculture
- Properties participating in the Section 542 Rural Housing Voucher program
- Properties having any tenant who uses a Rural Housing Voucher

To find out if it is a covered property (Covered by VAWA or USDA rural housing voucher), consider:

- If the tenant must do an annual income recertification the property is likely a covered property
- If the tenant deals with a Public Housing Authority for matters related to their housing it is likely a covered property
- If the tenant’s rent adjusts based on their income the property is likely a covered property
- The tenant’s lease may reference a federal subsidy program

Some subsidies are searchable on the [National Housing Preservation Database](#).

For cases, *see* discussion, *infra*, at [III.B.1.b](#).

#### b. Properties with Federally Backed Mortgages

Covered properties also include properties with a federally backed single family (1-4 units) or multifamily mortgage:

- Mortgage insured by the Federal Housing Administration (FHA)
- Mortgage guaranteed, provided by, or insured by HUD, the Department of Veterans Affairs (VA), or Department of Agriculture (USDA)
- Mortgage owned by Fannie Mae or Freddie Mac
- Federally backed multifamily mortgage loan secured by a property with five or more dwelling units

Research tools:

- To find out if it is a covered property (Federally backed mortgage) sometimes this information is recorded in public records, but sometimes it is not.
- A [non-exhaustive database](#) of multifamily properties with HUD, FHA, USDA, Fannie Mae, and Freddie Mac mortgages can be found at the National Low Income Housing Coalition.
- Seattle Times Reporter Katherine Long created a [spreadsheet](#) in 2020 that lists properties from all 50 states (doesn't include VA or USDA loans).



For cases, *see* discussion, *infra*, at [III.B.1.b.](#)

#### 4. Cases

*See* discussion, *infra*, at [III.B.1.b.](#)

### C. CDC Eviction Suspension Order

#### 1. Initial Order

The Centers for Disease Control and Prevention (CDC) issued the [Order - Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19](#) to be September 4 through December 31, 2020.

##### a. National Moratorium Residential Evictions for Nonpayment of Rent, Fees or Charges

The Order declared a national moratorium on certain residential evictions for nonpayment (of rent, as well as other fees or charges) under the authority of 42 C.F.R. § 70.2 (authoring the CDC Director, upon a finding that state health authorities have not taken sufficient measures to prevent the spread of a communicable disease, to "take such measures to prevent such spread of the diseases as he/she deems reasonably necessary").

The moratorium applies only to tenants who present a signed form declaration, the text of which appears in the order, to their landlords. To sign the declaration, a tenant must be able to meet certain financial criteria, be unable to pay full rent due to an income loss or "extraordinary" medical bills, have used best efforts to obtain governmental rent assistance, likely become homeless or forced to "live in close quarters" in another residence if evicted, and promise to "make timely partial payments that are as close to the full payment as the individual's circumstances may permit."

The order applies in every U.S. state and territory with reported cases of Covid-19, except for states, local territorial, or tribal areas that already have "a moratorium on residential evictions that provides the same or greater level of public health protection than the requirements listed in this Order."

The order prohibits any "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action" from evicting a covered person from "from any residential property." The terms "landlord" and "owner" are not specifically defined. "Residential property" is defined to include "any property leased for residential purposes," and goes on to specify the term includes "any house, building, mobile home or land in a mobile home park, or similar dwelling leased for residential purposes." However, the definition does "not include any hotel, motel, or other guest house rented to a temporary guest or seasonal tenant" as defined under state law.

b. Covered Persons

To be a "covered person" entitled to the protection of the order, one must (i) be a "tenant, lessee, or resident of a residential property" and (ii) provide a required declaration, sworn under penalty of perjury, to the landlord. The order included, as an attachment, a form declaration for tenants to use-though it is not clear whether tenants must use the form declaration or may use a different form so long as the required contents are present. The preamble to the form states that "[e]ach adult listed on the lease, rental agreement, or housing contract should complete this declaration," though again, it is unclear what the effect of having fewer than all listed adults sign the declaration would be.

The contents of the declaration are as follows:

- I have used best efforts to obtain all available government assistance for rent or housing
- I either expect to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), was not required to report any income in 2019 to the U.S. Internal Revenue Service or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act.
- I am unable to pay my full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses.
- I am using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses.
- If evicted I would likely become homeless, need to move into a homeless shelter, or need to move into a new residence shared by other people who live in close quarters because I have no other available housing options.
- I understand that I must still pay rent or make a housing payment and comply with other obligations that I may have under my tenancy, lease agreement, or similar contract. I further understand that fees, penalties, or interest for not paying rent or making a housing payment on time as required by my tenancy, lease agreement, or similar contract may still be charged or collected.
- I further understand that at the end of this temporary halt on evictions on December 31, 2020, my housing provider may require payment in full for all payments not made prior to and during the temporary halt and failure to pay may make me subject to eviction pursuant to State and local laws.

- I understand that any false or misleading statements or omissions may result in criminal and civil actions for fines, penalties, damages, or imprisonment.
- I certify the truth and correctness of the contents "under penalty of perjury, pursuant to 28 U.S.C. 1746.

c. Exceptions

Nothing in the Order precludes evictions based on a tenant, lessee, or resident:

- engaging in criminal activity while on the premises;
- threatening the health or safety of other residents;
- damaging or posing an immediate and significant risk of damage to property;
- violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).

d. Further Information

Here are links for further information:

CDC Eviction Suspension Order

<https://www.cdc.gov/coronavirus/2019-ncov/covid-eviction-declaration.html>

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/eviction-moratoria-order-faqs.pdf>

National Housing Law Project

<https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>

<https://www.nhlp.org/wp-content/uploads/CDC-FAQ-for-Renters.pdf>

National Low Income Housing Coalition

<https://nlihc.org/coronavirus-and-housing-homelessness/national-eviction-moratorium>

<https://nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf>

e. Limited Impact in Minnesota

The CDC Eviction Suspension Order probably did not apply while [Emergency Executive Order 20-79](#) is in effect since Executive Order 20-79 generally provided greater level of public health protection (i.e. more than just nonpayment of rent cases).

However, one of the [Emergency Executive Order 20-79](#) exceptions provided less

protection by allowing the property owner to eviction tenants to allow property owner or owner's family member(s) to move into the property. If the courts interpreted the CDC Order as providing a "floor" of eviction protection, local moratorium provisions could have been considered on a case-by-case basis and applied in addition to the CDC order where the local provision is more favorable to tenants.

## 2. Extension of the CDC Eviction Suspension Order

The original order was set to expire on December 31, 2020, but Congress extended the order to January 31, 2021 in Sec. 502 of the Consolidated Appropriations Act of 2021. *See* Pub. L. 116-260, §502 (Dec. 27, 2020).

The CDC then extended the order to March 31, 2021, 86 Fed. Reg. 8020 (Feb. 3, 2021), and has now extended it again in new Order effective through June 30, 2021. [CDC, HHS, Temporary Halt in Residential Evictions to Prevent the Spread of Covid-19 \(Mar. 29, 2021\)](#). *See* [CDC Eviction Moratorium –Revised Analysis \(National Housing Law Project - downloaded March 30, 2021\)](#).

After its expiration, the CDC issued another suspension through October 3, 2021. [CDC Eviction Moratorium \(National Housing Law Project Aug. 20, 2021\)](#). In *Alabama Association of Realtors, et al. v. Department of Health and Human Services, et al.*, 594 U. S. \_\_\_\_ (2021), the United States Supreme Court invalidated the order.

## D. Minnesota Court Administrative Orders

### 1. Minnesota Supreme Court Orders

The Minnesota Judicial Branch continues to be in a transitional phase. Hearings across all case types will be conducted remotely. Exceptions may be granted for in-person proceedings under limited circumstances.

At least one counter service window must be open in each county and for the appellate courts during normal business hours. Some services may be provided remotely or by appointment only. Face coverings are required in all court facilities. Visitors who do not have access to a face covering will be provided one. Everyone in a court facility is required to maintain 6 feet social distancing.

All Minnesota Supreme Court pandemic orders are posted here: [COVID-19 Information \(Minnesota Judicial Branch\)](#).

### 2. Selected District Court Orders

#### a. Second Judicial District for Ramsey County

In the Second Judicial District, the complaint must state whether the property is governed by the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act § 4024](#) and if so, whether the plaintiff provided the required 30 day notice, and that the plaintiff provided the [Emergency Executive Order 20-79](#) notice to the tenant of the intention to file the eviction action. Non-emergency cases shall be designated confidential. [Administrative Order Regarding the Resumption of Housing Court Operations \(Minn. Dist. Ct. 2nd Dist. Aug. 19, 2020\) \(Judge Castro\) \(Appendix PED-19a\)](#) provides after the introduction:

IT IS ORDERED

1. All Eviction Complaints led after the date of this Order, must include a statement which addresses whether:
  - a. The premise is a “covered dwelling” subject to Section 4024 of the CARES Act.
  - b. The plaintiff is a “multifamily borrower” under forbearance subject to Section 4024 of the CARES Act; and
  - c. The plaintiff has provided the defendant with 30 days’ notice to vacate under [Sections 4024\(c\) and 4023\(e\) of the CARES Act](#).
  - d. The plaintiff has complied with [paragraph 6 of Executive Order 20-79](#) requiring all property owners, mortgage holders, or other persons seeking possession to provide a written notice of intent to le an eviction action to the tenant at least 7 days prior to ling the action, or the specified notice period included in the lease, whichever is longer.
2. Judicial officers presiding in Housing Court have the authority to develop the facts of the case, including whether or not the premises is a “covered dwelling,” the plaintiff is a “multifamily borrower” under forbearance subject to [Sections 4024 and 4023 of the CARES Act](#), respectively, and whether proper notices have been given.
3. The Administrative Order Declaring Certain Housing/Eviction Matters Non—Public issued on March 3 1, 2020 is amended as follows:
  - a. Cases and case lings categorized as non-emergency and made confidential shall be designated as Condential2 by Court Administration.
  - b. Cases and case lings categorized as non-emergency and made confidential shall be made public once the matter qualifies for a hearing, is scheduled on a court calendar, and a summons issued.
  - c. Irrespective of paragraph 3b of this Order, court administration shall immediately make the following information available to Ramsey County Emergency Assistance,

Neighborhood House, the Dispute Resolution Center, Volunteer Lawyers Network, and Southern Minnesota Regional Legal Services for the purpose of contacting and assisting litigants in the early resolution of their eviction action on all cases made confidential under this order:

I. The court case number

ii. The party and attorney names

iii. Contact information for the parties and attorneys including:

1. Mailing address

2. Phone number

3. Email address

d. Ramsey County Emergency Assistance, Neighborhood House, the Dispute Resolution Center, Volunteer Lawyers Network, and Southern Minnesota Regional Legal Services shall only use this information to assist with the resolution of pending cases and shall not disseminate this information to any other organizations other than those listed above, a party to the case, or an attorney to a party to the case without further authorization of the court.

4. Complaints that were led during the peacetime emergency and which did not qualify for an exception to the Executive Orders suspending eviction actions shall be set for a hearing to dismiss and notice shall be given to the Landlord. The action shall be dismissed unless, prior to the hearing, the Landlord requests that the action continue and for the court to issue a summons.

5. When [Executive Order 20-79](#) or any successor Executive Orders expire or allow additional residential eviction actions,

a. Cases will be scheduled on block-style calendars with specific timeframes. Parties will have the option to participate in the hearings remotely (using telephone or Zoom) or in—person. The Second Judicial District strongly encourages parties and their attorneys to attend hearings remotely, but will provide social-distancing accommodations for in-person attendance.

b. Court administration shall issue a summons, commanding the person against whom the complaint is made to appear before the court on a day and at a place stated in the summons for all cases where an initial appearance has not been held.

c. For all cases that were previously scheduled for an initial appearance and led prior to March 24, 2020 but had the initial appearance cancelled as a result of the peacetime emergency, service of the new summons shall be made in compliance with [Minn. Stat. §](#)

[504B.331.](#)

d. For the 60 days following the expiration of the Peacetime Emergency declared in Executive Order 20-01, the parties shall be notified of resources and clinic services available to them at the initial appearance. If parties request clinic services, including legal advice and representation, emergency rental assistance and dispute resolution, the court will recess to allow the provision of such services if possible. If it is not possible to obtain requested services at the initial appearance, the case shall be given a seven (7) day continuance. Parties shall be given contact information for all clinic services.

6. This Administrative Order remains in full force and effect until rescinded or amended by a further court order.

*Id.* at 2-3.

For other Ramsey County orders, see [COVID-19 Information \(Minn. Dist. Ct. 2nd Dist.\)](#).

b. Fourth Judicial District for Hennepin County

The Hennepin County District Court has issued orders specific to eviction actions. [Administrative Order Declaring Certain Housing/eviction Matters Non-public \(Minn. Dist. Ct. 4th Dist. Mar. 31, 2020\) \(Judge Miller\) \(Appendix PED-18\)](#) provides:

1. All residential housing/eviction matters newly filed after 5:00 p.m. on March 26, 2020, shall be reviewed by a judge or judicial officer to determine if the case involves an emergency in which an individual or public health or safety risk exists or if the pleadings assert a violation of Minnesota Statutes § 504B.171, subd. 1.
2. If the judge or judicial officer determines that the case does not qualify for an emergency hearing, the matter shall not be accessible to the public and all case filings in said matter shall be designated confidential.
3. The confidentiality designations under this Administrative Order shall continue until such time as the [Governor's Executive Order 20-14](#) and the Chief Justice's Emergency Order ADM 20-8001 (or any subsequent order amending or replacing these emergency orders) have lapsed, and new summons have issued to set the matters for a hearing. When any matter designated as confidential by this Order is set for hearing, the Court Administrator is directed to remove the confidentiality designation and to open the case and its documents to the public.

[Standing Order re 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01 \(Minn. Dist. Ct. 4th Dist. July 22, 2020\) \(Judge Robiner\) \(Appendix PED-19\)](#) provides:

[T]he following provisions will apply for the 60 days following the lifting of the peacetime emergency.

IT IS ORDERED

(1) When Housing Court resumes scheduling hearings for recovery of possession of premises pursuant to [Minn. Stat. Ch. 504B](#), the following operational priorities will apply:

a. First priority: complaints alleging illegal activity, a violation of [Minn. Stat. § 504B.171](#), or a complaint that would have been subject to an exception to Governor’s Executive Orders [20-14](#), [sic] [20-23 \[20-73\]](#), & [20-79](#).

b. Second priority: all cases that were previously scheduled for an initial appearance and filed prior to March 24, 2020 but had the initial appearance cancelled as a result of the peacetime emergency.

c. Third priority: complaints filed during the peacetime emergency that did not qualify as an exception to the Executive Orders suspending eviction actions.

d. Fourth priority: complaints filed after the lifting of the peacetime emergency.

e. Instead of setting many cases for one hearing time as has traditionally been common, smaller calendars noticed for specific timeframes will be scheduled. Parties will have the option to participate in the hearings remotely (using telephone or Zoom) or in-person.

(2) At the initial hearing noticed by summons, the following shall occur:

a. The landlord, landlord’s attorney, or landlord’s agent must affirm under oath that they have a good faith and reasonable belief that the subject property is not a “covered property” for purposes of the CARES Act Sec. 4024(a)(2) or if the property is a “covered property”, that they have complied with notices requirements outlined in the CARES Act.

b. The parties shall be notified of resources and services available to them at the initial hearing, during the 7-day adjournment, and shall be given the contact information for each of the services (if the services can be provided at the initial hearing, the court will recess to allow for the provision of such services):

i. Mid-Minnesota Legal Aid and Volunteer Lawyers Network are available to consult with and represent income qualifying individuals. HOMELine is a tenant legal advice resource without income limitations.

ii. Hennepin County Emergency Rental Assistance Program, Minnesota Assistance



Council for Veterans, and Tenant Resource Center may be able to assist the parties with payment of some or all of the rent due.

iii. The Conflict Resolution Center and Community Mediation & Restorative Services are available to provide free mediation services for landlords and tenants.

iv. The Court will approve out of court settlement agreements filed prior to the pretrial hearing described below, and cancel the pretrial hearing, if the agreement identifies that one of the above resources has been utilized.

(3) Housing court cases shall adjourn and schedule a pretrial hearing as soon as possible but no sooner than (7) calendar days following the initial hearing. Any party that does not appear at the pretrial hearing may be found to be in default.

a. Cases will not be adjourned if: the plaintiff dismisses the complaint, if the defendant was properly served pursuant to [Minn. Stat. § 504B.331](#) and *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013)(review denied) and defendant fails to appear, or if the parties have reached an agreement.

For other Hennepin County orders, see [COVID-19 Information \(Minn. Dist. Ct. 4th Dist.\)](#).

c. Other Judicial Districts

All District Court pandemic orders are posted here: *COVID-19 Information* (Minnesota Judicial Branch) <http://www.mncourts.gov/Emergency.aspx>.

Here are other selected district court pandemic websites:

- [Olmsted County](#)
- [St. Louis County in Duluth](#)

E. Relaxation of Statutory Deadlines for Court Proceedings

1. 2020 and 2021 Minnesota Session Laws

A special session law suspended statutory deadlines for district and appellate court proceedings. It also provided that courts may continue to hold hearings, require appearances, or issue orders if "circumstances relevant to public safety, personal safety, or other emergency matters require action in a specific case."

It expired on February 15, 2021. [Minn. Session Laws 2020 Chapter 74, H. F. No. 4556](#).

[Session Laws 2020 Chapter 3, H. F. No. 114](#) extended these provisions through April 15, 2021.

Deadlines imposed by statutes governing proceedings in the district and appellate courts, including any statutes of limitations or other time periods prescribed by statute, ~~is suspended during~~ shall not expire from the beginning of the peacetime emergency declared on March 13, 2020, in governor's Executive Order 20-01 ~~and any extensions authorized under Minnesota Statutes, section 12.31, subdivision 2, and for 60 days after the end of the peacetime emergency declaration~~ through April 15, 2021. Nothing in this paragraph prevents a court from holding a hearing, requiring an appearance, or issuing an order during the peacetime emergency if the judge determines that individual circumstances relevant to public safety, personal safety, or other emergency matters require action in a specific case.

In *State v. Moreno*, No. A20-1095, 2021 WL 1082346 (Minn. Ct. App. Mar. 22, 2021) (nonprecedential), the court held that a pro se criminal defendant who filed a request in district court for a contested restitution hearing after the statutory deadline was timely since the deadline had not yet passed on March 13, 2020 when Governor Walz issued Emergency Executive Order 20-1 declaring a peacetime emergency due to the spread of the infectious disease COVID-19 and the resulting pandemic.

## 2. Common Law

In *Rice Park Properties v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556 (Minn. 1995), the Minnesota Supreme Court decision reversed the Court of Appeals and affirmed the district court decision to stay an unlawful detainer (now called eviction) action pending final disposition of a related and earlier filed declaratory judgment action commenced by the tenant regardless of [Minn. Stat. § 504B.341](#) that limits eviction action continuances. See *Thompson v. Stevens*, No. C6-96-650 (Minn. Ct. App. Dec. 10, 1996), FINANCE AND COMMERCE at 76 (Dec. 13, 1996) (Appendix 299) (Unpublished: followed *Rice Park Properties*).

Courts can consider relaxing these deadlines in [Minn. Stat. Ch. 504B](#), including:

- [Minn. Stat. § 504B.285, Subd. 5](#) (rent into court in combined breach and rent evictions),
- [Minn. Stat. § 504B.321](#) (eviction scheduling),
- [Minn. Stat. § 504B.341](#) (eviction continuance),
- [Minn. Stat. § 504B.345](#) (stay of eviction writ),
- [Minn. Stat. § 504B.371](#) (eviction appeal),
- [Minn. Stat. § 504B.375](#) (lockout motion by landlord and appeal),
- [Minn. Stat. § 504B.381](#) (emergency tenant remedies action),
- [Minn. Stat. § 504B.385](#) (rent escrow action), and
- [Minn. Stat. § 504B.401](#) (scheduling tenant remedies action).

## F. Health Impact of Evictions in the Pandemic

Several studies have examined the effect of evictions on public health during the pandemic.

### 1. 2020

One study concluded: “Our model predicts that even for lower eviction rates that don’t dramatically change the population-level epidemic burden, the individual risk of infection was always substantially higher for those who experienced eviction, or who merged households with those who did.... However, the increased risk of infection was not only felt by those who doubled-up: for individuals who were neither evicted nor merged households with those who did, the risk of infection relative the counterfactual scenario of no evictions was 1.05 for an eviction rate of 0.25%/month and 1.5 for 2.0% evictions per month.... This increased risk highlights the spillover effects of evictions on the wider epidemic in a city.” J. Sheen, A. Nande, E. Walters, B. Adlam, A. Gheorghe, J. Shinnick, M. Tejada, A. Greenlee, D. Schneider, A. Hill & M. Levy, *The Effect of Eviction Moratoriums on the Transmission of SARS-CoV-2* at 4 (Johns Hopkins University Institute for Computational Medicine and University of Pennsylvania Perelman School of Medicine)

Abstract - <https://www.medrxiv.org/content/10.1101/2020.10.27.20220897v1>

Study - <https://www.medrxiv.org/content/10.1101/2020.10.27.20220897v1.full.pdf>

One on the study authors described it at a recorded seminar on September 8, 2020. The modeling study from the Johns Hopkins University Institute for Computational Medicine and University of Pennsylvania Perelman School of Medicine found that when tenants are evicted, they often move in with other family members, increasing the size of households and the chance for viral transmission, and concluding that policies to stem evictions are a warranted and important component of COVID-19 control. The model did not include the effect of homelessness in shelters and encampments. M. Levy, *Evictions and the Spread of Coronavirus, in Coronavirus and Housing/Homelessness* (National Low Income Housing Coalition Sep. 8, 2020) (slides 16-20, recording at 29:20-42:10)

<https://nlihc.org/resource/recording-available-nlihcs-september-8-national-call-coronavirus-disasters-housing-and>

Another study found a connection between eviction and health outcomes, and concludes that eviction prevention, through moratoria and other supportive measures, is a key component of a pandemic control strategy to mitigate COVID-19 spread and death. E. Benfer, D. Vlahov, M. Long, E. Walker-Wells, J. Pottenger, G. Gonsalves, & D. Keene, *Pandemic Housing Policy: Examining the Relationship Among Eviction, Housing Instability, Health Inequity, and COVID-19 Transmission* (November 2020). The authors include professors from Wake Forest University School of Law, Yale University Law School, School of Public Health and School of Nursing, and Columbia University Mailman School of Public Health, to be published in the *Journal of Urban Health*. <https://ssrn.com/abstract=3736457>

Yet another study tested whether lifting eviction moratoriums was associated with COVID-19 incidence and mortality. It concluded that “[l]ifting eviction moratoriums was associated with significant increases in COVID-19 incidence and mortality in U.S. states, supporting the public health rationale for use of eviction moratoriums to prevent the spread of COVID-19. Lifting moratoriums amounted to an estimated 433,700 excess cases and 10,700 excess deaths during the study period (March 13-September 3).” K. Leifheit, S. Linton, J. Raifman, G. Schwartz, E. Benfer, F. Zimmerman, & C. Pollack, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* Abstract (November 30, 2020). The authors include professors from University of California, Los Angeles (UCLA), Johns Hopkins University Bloomberg School of Public Health, Boston University, University of California, San Francisco (UCSF) Institute for Health Policy Studies, and Wake Forest University School of Law. <https://ssrn.com/abstract=3739576>

The study included a table of estimated infections and deaths in states that ended their eviction suspensions. Texas topped the list with estimates of 148,530 infections and 4,456 deaths. *Id.* at 14. Comparing states with populations similar to Minnesota can suggest the number of infections and deaths that were prevented by maintaining [Emergency Executive Order 20-79](#) and its predecessors.

- A: July 1, 2019 Estimated Population
- B: Date Eviction Suspension Ended
- C: Weeks End of Suspension to September 3, 2020
- D: Estimated Excess Virus Cases after Date Eviction Suspension Ended
- E: Estimated Excess Virus Deaths after Date Eviction Suspension Ended

State	A	B	C	D	E
Maryland	6,045,680	July 25, 2020	6	2,310	37
Wisconsin	5,822,434	May 26, 2020	14	19,840	346
Colorado	5,758,736	June 13, 2020	12	8,620	254
<i>Minnesota</i>	<i>5,639,632</i>	<i>Eviction suspension maintained</i>			
South Carolina	5,148,714	May 14, 2020	16	37,590	1,090
Alabama	4,903,185	May 31, 2020	14	26,470	621

Louisiana	4,648,794	June 15, 2020	12	29,650	959
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The population estimates are from *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019* (NST-EST2019-01) <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/state/totals/nst-est2019-01.xlsx> (viewed Mar. 31, 2021). The estimates can be found at *State Population Totals and Components of Change: 2010-2019* (United States Census Dec. 30, 2019) <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html> (viewed Mar. 31, 2021).

Study co-author Dr. Leifheit has estimated infections prevented and lives saved between May and September in states that maintained their eviction suspensions.

State	Cases Prevented by Suspension	Deaths Prevented by Suspension
Arizona	63,700	2,540
California	186,600	6,520
Connecticut	17,100	1,520
District of Columbia	3,900	170
Florida	197,700	6,140
Hawaii	2,200	30
Illinois	63,200	2,670
Massachusetts	31,800	2,400
<i>Minnesota</i>	<i>22,200</i>	<i>680</i>
Montana	2,100	60
Nevada	16,400	580
New Jersey	53,000	3,940
New Mexico	6,800	310
New York	135,000	10,230
Oregon	6,200	180
Vermont	600	20
Washington	18,400	740

TOTAL	826,900	38,730
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K. Leifheit, *State-level COVID-19 Cases and Deaths Associated with Eviction Moratoriums* (Dec. 2020) [https://drive.google.com/file/d/1x8qezy\\_mXiaw7eKsU\\_D9zQnQYY0YMfgP/view](https://drive.google.com/file/d/1x8qezy_mXiaw7eKsU_D9zQnQYY0YMfgP/view) (viewed Mar. 31, 2021)

Note that this estimate does not cover the fall of 2020 when many states saw dramatic increases in infections and deaths. *Coronavirus in the U.S.: Latest Map and Case Count* (New York Times Dec. 15, 2020) <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (viewed Mar. 31, 2021).

During the time span of the study, in Minnesota, from March 24, when the first Emergency Executive Order suspending evictions began, through September 3, Minnesota saw 1,834 deaths and 80,704 positive cases in just over 5 months. [Situation Update for COVID-19 \(Minnesota Department of Health - viewed Mar. 31, 2021\)](#).

From September 4 through January 4, Minnesota saw another 3608 deaths and 342,455 positive cases in 4 months, or twice as many deaths and over four times as many positive cases, for a total of 5,443 deaths and 429,022 positive cases. *Id.*

It is reasonable to add twice as many saved lives and four times as many positive cases prevented to the summer estimate, totaling potentially 2,040 lives saved and 111,000 positive cases prevented through January 4, 2021.

## 2. 2021

A study reported in the *Journal of the American Medical Association* on August 30, 2021 found that “residents in states that lifted eviction moratoria had an increased risk of receiving a COVID-19 diagnosis 12 weeks after the moratorium was lifted relative to residents in states where moratoria remained in place. These associations increased over time, particularly among individuals with more comorbidities and lower socioeconomic status.” [Sebastian Sandoval-Olascoaga, Atheendar S. Venkataramani, & Mariana C. Arcaya, \*Eviction Moratoria Expiration and COVID-19 Infection Risk Across Strata of Health and Socioeconomic Status in the United States\* \(Journal of the American Medical Association Aug. 30, 2021\)](#).

## G. Answer Forms

1. Poverty Law Answer Form No. A1v1 applies to eviction actions under [Emergency Executive Order 20-79](#).

2. Answer Form No. A1v2 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) through October 12, 2021.

3. Answer Form No. A1v3 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) after October 12, 2021 through June 1, 2022.

*See Pandemic Eviction and Other Housing Laws and Rules*

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

## CHAPTER II: EVICTION ACTION INTRODUCTION

### A. Eviction Actions and Landlord-Tenant Relationships

It is beyond the scope of this manual to cover all issues in eviction actions. Residential Eviction Defense and Tenant Claims in Minnesota contains a detailed discussion of them. For a summary of eviction actions and landlord and tenant relationships, *see* Residential Eviction Defense and Tenant Claims in Minnesota [Chapter I](#).

### B. Subject Matter Jurisdiction

Evictions actions have limited subject matter jurisdiction. *See* Residential Eviction Defense and Tenant Claims in Minnesota [Chapter III](#).

### C. Procedure

Eviction actions are governed by procedural statutes in [Minn. Stat. Ch. 504B](#), the Minnesota Rules of Civil Procedure, and the Minnesota General Rules of Practice. Cases in Hennepin County and Ramsey County also are governed by Housing Court rules in the Minnesota General Rules of Practice. For more information, *see* Residential Eviction Defense and Tenant Claims in Minnesota [Chapter V](#).

## CHAPTER III: EVICTION CLAIMS AND DEFENSES UNDER EMERGENCY EXECUTIVE ORDERS 20-14, 20-73, AND 79

### A. Causes of Action

#### 1. Allowable Bases for Eviction

Under [Emergency Executive Order 20-79](#), the allowable bases for eviction are the exceptions to the eviction suspension. *See* discussion, *supra*, at [I.A.2.b.\(1\)](#).

#### 2. Precluded Bases for Eviction

Precluded evictions are those outside the exceptions, including:

- Nonpayment of rent, late fees, and charges
- Holding over after expiration or termination of the lease, except for residential landlords who issue a termination of lease or nonrenewal of lease due to the *need* to move the property owner or property owner’s family member(s) into the property and where the property owner or property owner’s family member(s) move into the property within 7 days after it is vacated by the tenant, unless the exception is precluded by the CDC Eviction Suspension Order. *See* discussion, *supra*, at [I.C.2.](#)
- Breach of lease, except where the tenant (1) seriously endangers the safety of other residents, (2) violates [Minnesota Statutes 2019, section 504B.171, subdivision 1](#), (3) materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: (a) seriously endangers the safety of others, or (b) significantly damages property.

a. Nonpayment of Rent

In [Chik-Fufa v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1632 \(Minn. Dist. Ct. 4th Dist. Oct. 30, 2020\) \(Referee Sedillos\) \(Appendix PED-45\)](#), the landlord filed an eviction action in September 2020 claiming nonpayment of rent, breach of lease, holding over after termination of the tenancy, and unlawful activities. The court dismissed all claims except the claims of possession of drugs and stolen property. The court then dismissed the action without prejudice where the landlord failed to serve the complaint on the Section 8 Voucher Program of the public housing authority and ordered expungement.

In [LO2, LLC v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-567 \(Minn. Dist. Ct. 4th Dist. Oct. 5, 2020\) \(Referee Houghtaling\) \(Appendix PED-47\)](#), the landlord filed a nonpayment of rent eviction action in January 2020, two months before the first Emergency Executive Order. The trial was in July 2020, over three months after the first Emergency Executive Order. The court found that (1) the landlord could not charge rent for the months it did not have a rental license in Minneapolis, (2) the lease executed when the landlord did not have a rental license was void, (3) the landlord second lease the shared utility meter statutes, [Minn. Stat. §§ 504B.221 and 504B.161](#), by not explaining apportionment of the bills, (4) and the landlord accepted partial payments of rent and waived the right to evict for previous rent due under [Minn. Stat. § 504B.291](#). The court credited rent paid without a rental license against rent owed when the landlord had a rental license. The court noted the Emergency Executive Orders prevented eviction for nonpayment of rent but ordered the tenant to pay the remaining rent due and ordered them to accept it. The court ordered entry of judgment for the tenant along with costs and disbursements.

In [Williams v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1513 \(Minn. Dist. Ct. 4th Dist. Oct. 6, 2020\) \(Judge Miller\) \(Appendix PED-55\)](#), the landlords filed a second eviction action claiming nonpayment of rent and a violation of [Minn. Stat. § 504B.171](#) following dismissal of the first eviction action for lack of enough specificity in the complaint. In the second action, the



defendant argued that [Emergency Executive Order 20-79](#) prohibited nonpayment of rent eviction actions and that the named plaintiffs were not owners of the property. The plaintiff amended their complaint to drop the nonpayment of rent claim and to add their trust that owned the property as another plaintiff. Following a trial on the [Minn. Stat. § 504B.171](#) claim, the court found that the plaintiffs did not offer sufficient evidence to connect the smell of marijuana to the defendant. The court dismissed the action with prejudice and ordered expungement and statutory costs.

b. Holding over after Notice

In [Chik-Fufa v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1632 (Minn. Dist. Ct. 4th Dist. Oct. 30, 2020) (Referee Sedillos) (Appendix PED-45), the landlord filed an eviction action in September 2020 claiming nonpayment of rent, breach of lease, holding over after termination of the tenancy, and unlawful activities. The court dismissed all claims except the claims of possession of drugs and stolen property. The court then dismissed the action without prejudice where the landlord failed to serve the complaint on the Section 8 Voucher Program of the public housing authority and ordered expungement.

In [Tish v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1651 (Minn. Dist. Ct. 4th Dist. Nov. 16, 2020) (Judge Sande) (Appendix PED-51), the parties were romantic partners until their relationship deteriorated and the defendant obtained an order for protection against the plaintiff who owned the home. The plaintiff filed an eviction action and both parties removed a referee. The plaintiff argued that the defendant was not a tenant because they never signed a lease and she never paid rent. The defendant argued and the court concluded that she was a tenant at will since she resided on the property for two years and she was entitled to a three-month lease termination notice under [Minn. Stat. § 504B.135](#) that the plaintiff did not give. The court dismissed the action.

In [Promised Land Prop., LLC v. \\_\\_\\_\\_\\_](#), No. 48-CV-21-941 (Minn. Dist. Ct. 7th Dist. May 20, 2021) (Judge Kulick) (Appendix PED-58) and [Complaint \(Appendix PED-58a\)](#), the landlord claimed holding over after termination of the lease. The court concluded the eviction did not fall within the [Emergency Executive Order 20-79](#) exceptions and ordered the landlord could proceed when the moratorium is lifted. The court should have dismissed the eviction action.

c. Breach of Lease

In [Chik-Fufa v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1632 (Minn. Dist. Ct. 4th Dist. Oct. 30, 2020) (Referee Sedillos) (Appendix PED-45), the landlord filed an eviction action in September 2020 claiming nonpayment of rent, breach of lease, holding over after termination of the tenancy, and unlawful activities. The court dismissed all claims except the claims of possession of drugs and stolen property. The court then dismissed the action without prejudice where the landlord failed to serve the complaint on the Section 8 Voucher Program of the public housing authority and ordered expungement.

In [CBC 202 Limited Partnership v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1301 (Minn. Dist. Ct. 4th

[Dist. July 21, 2020](#)) ([Referee Sedillos](#)) ([Appendix PED-48](#)), the filed the eviction action in April 2020 and the parties reached a settlement. In June 2020, the landlord filed a declaration of noncompliance and the tenant filed an affidavit of objection requesting an evidentiary hearing. The court found testimony to be credible that the tenant was intoxicated in the common areas in violation of the settlement agreement, and that the tenant was in the common areas without a mask. The court ordered entry of judgment for the landlord, but stayed issuance of the writ of recovery while the Emergency Executive Orders remained in effect.

d. Unlawful Occupancy

In [Paquin v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-21-195 (Minn. Dist. Ct. 4th Dist. May 6, 2021) ([Referee Houghtaling](#)) ([Appendix PED-54](#)), the plaintiff claimed that the defendants had unlawfully and forcibly occupied and taken possession of the property under [Minn. Stat. § 504B.301](#). The defendants lived on the property with the mother of one defendant and the grandmother of the other defendant. After the owner died, the plaintiff, the sister of one defendant and the aunt of the other defendant, became the executor of the estate and later owner of the property. The court concluded that the defendants could not have unlawfully or forcibly occupied the property when they had the decedent's permission to reside there, and that the plaintiff did not allege an exception to [Emergency Executive Order 20-79](#). The court dismissed the action without prejudice and granted expungement.

2a. Commercial v. Residential Evictions

In [Bina v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-12615 (Minn. Dist. Ct. 4th Dist. Oct. 29, 2020) ([Appendix PED-28](#)), the plaintiff claimed the lease was commercial and the defendant claimed it was both commercial and residential. The parties used a form lease titled Minnesota Standard Residential Lease that listed a company and two individuals as tenants, and the plaintiff included all three as defendants. Defendant A. S. testified that he lived on the property. The court concluded that he was a residential tenant and plaintiff could not evict for nonpayment of rent and the water bill.

Paragraph 5 of [Emergency Executive Order 20-79](#) is not limited to residential rental eviction writs, so it also limits execution of eviction writs for commercial tenancies and post mortgage foreclosure and contract for deed cancellations to the exceptions in [Paragraphs 2-4 of Emergency Executive Order 20-79](#). See discussion, *supra*, at [I.A.2.b.\(1\)](#).

2b. Eviction Actions Predating the Emergency Executive Orders

In [LO2, LLC v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-567 (Minn. Dist. Ct. 4th Dist. Oct. 5, 2020) ([Referee Houghtaling](#)) ([Appendix PED-47](#)), the landlord filed a nonpayment of rent eviction action in January 2020, two months before the first Emergency Executive Order. The trial was in July 2020, over three months after the first Emergency Executive Order. The court found that (1) the landlord could not charge rent for the months it did not have a rental license in Minneapolis,

(2) the lease executed when the landlord did not have a rental license was void, (3) the landlord second lease the shared utility meter statutes, [Minn. Stat. §§ 504B.221](#) and [504B.161](#), by not explaining apportionment of the bills, (4) and the landlord accepted partial payments of rent and waived the right to evict for previous rent due under [Minn. Stat. § 504B.291](#). The court credited rent paid without a rental license against rent owed when the landlord had a rental license. The court noted the Emergency Executive Orders prevented eviction for nonpayment of rent but ordered the tenant to pay the remaining rent due and ordered them to accept it. The court ordered entry of judgment for the tenant along with costs and disbursements.

3. Answer Forms

a. Poverty Law Answer Form No. A1v1 applies to eviction actions under [Emergency Executive Order 20-79](#).

b. Answer Form No. A1v2 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) through October 12, 2021.

c. Answer Form No. A1v3 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) after October 12, 2021 through June 1, 2022.

*See Pandemic Eviction and Other Housing Laws and Rules*

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

B. Required Prefiling Termination Notices

1. Lease Termination Notice

a. Landlord Family Residency

One eviction suspension exception is for residential landlords *who issue a termination of lease or nonrenewal* of lease due to the *need* to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant. *See* discussion, *supra*, at [I.A.2.b.\(1\)](#).

[Emergency Executive Order 20-79](#) does not state the length of the notice. In a month-to-month tenancy, the notice should be one month. In leases with notice provisions, the notice should comply with the lease. *See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.1](#).

(1) Length of Notice

In term leases, the effective date of the notice should conform to expiration of the lease, since [Emergency Executive Order 20-79](#) did not create “grounds for eviction or lease termination beyond what is provided for by Minnesota Statutes.” [Emergency Executive Order 20-79, ¶ 12 at 3](#); see Letter from Evan Romanoff, Assistant Minnesota Attorney General to \_\_\_\_\_ at 2 (Nov. 18, 2020) (Appendix PED-22 - available from author).

In [Roggenkamp v. \\_\\_\\_\\_\\_, No. 18-CV-21-95 \(Minn. Dist. Ct. 9th Dist. Feb. 2, 2121\) \(Judge Middendorf\) \(Appendix PED-23\)](#), the court concluded that the termination letter for a month-to-month tenancy did not state a need to move into the property and did not comply with the time requirement of [Minn. Stat. § 504B.135\(a\)](#), plaintiffs did not establish the need to evict defendants, and an LLC cannot have a family member with a need to move into rental property.

In [Kelley v. \\_\\_\\_\\_\\_, No. 11-CV-19-2181 \(Minn. Dist. Ct. 9th Dist. Oct. 29, 2020\) \(Judge Strandlie\) \(Appendix PED-16\)](#), the court held for the landlord against the pro se tenant on the need for family member residency, finding:

Plaintiffs previously gave 30 notice to vacate however [sic] matter was stayed pursuant to Governor's Executive Order. Plaintiff testified under oath that a family member is prepared to move into the premises. Court Orders that this is a sufficient 30 day notice and orders eviction stayed until November 30, 2020. Plaintiff [sic] testified that said family member is prepared to move into the premises within 7 days of vacation by Def's.

*Id.* at 1. The court also found rent due for year of \$6,180.00 but did not rule on the claim of controlled substances on the premises. *Id.* at 1, 3. The court stayed the writ of recovery for a month. *Id.* at 1-2.

In [Duke v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1742 \(Minn. Dist. Ct. 4th Dist. Jan. 8, 2021\) \(Referee Sedillos\) \(Appendix PED-30\)](#), the plaintiff purchased the property from the former landlord of the tenant, and then the plaintiff and former landlord provided a one-month notice to terminate the month-to-month tenancy the succeeded the original term lease with the former landlord, stating that the plaintiff planned to move into the property. After the tenant did not move, the plaintiff provided the 7-day notice of intent to file the eviction action under [Emergency Executive Order 20-79](#). The court concluded that the former landlord properly assigned the lease to the plaintiff, the original lease was valid because the former landlord had a valid rental license and the failure of the plaintiff to get a license did not invalidate the lease because the plaintiff intended to live in the property. The tenant claimed retaliation based on the former landlord's attempt to terminate the lease after she requested repairs. The court concluded that the plaintiff's intention to live in the property was a substantial nonretaliatory purpose. The court ordered entry of judgment for the plaintiff for possession of the property, costs, and disbursements, and stayed the writ of recovery for 7 days.

In [Duke v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1742 \(Minn. Dist. Ct. 4th Dist. Jan. 8, 2021\) \(Referee Sedillos\) \(Appendix PED-46\)](#), the landlord gave the tenant a one-month notice that the

court upheld.

In [Tish v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1651 \(Minn. Dist. Ct. 4th Dist. Nov. 16, 2020\) \(Judge Sande\) \(Appendix PED-51\)](#), the parties were romantic partners until their relationship deteriorated and the defendant obtained an order for protection against the plaintiff who owned the home. The plaintiff filed an eviction action and both parties removed a referee. The plaintiff argued that the defendant was not a tenant because they never signed a lease and she never paid rent. The defendant argued and the court concluded that she was a tenant at will since she resided on the property for two years and she was entitled to a three-month lease termination notice under [Minn. Stat. § 504B.135](#) that the plaintiff did not give. The court dismissed the action.

(2) Content of Notice

The notice should explain the need to move the property owner or property owner's family member(s) into the property. In [Borsay v. \\_\\_\\_\\_\\_, No. 02-CV-20-4224 \(Minn. Dist. Ct. 10th Dist. Dec. 14, 2020\) \(Judge Logering\) \(Appendix PED-11\)](#), the landlord alleged that he needed to move his minor daughter, age 14, into a room in the property located. The court found:

d. Plaintiff's daughter is currently living with him, although he asserts that she does not have her own room. Based upon Plaintiff's testimony, his daughter came to live with him in July 2020. This is not a case where the property owner or property owner's family member is homeless or will become homeless.

e. It is also evident that a room became vacant at the property located at 491 57th Ave. NE, Fridley, MN 55432, in September 2020. However, rather than moving his daughter into the vacant room, Plaintiff stated that his nephew to move into the vacant room.

f. Additionally, it is apparent that Plaintiff owns another property at 7716 Hampshire Ave. N, Brooklyn Park, MN. Plaintiff asserts that his ex-wife lives at that property. Nonetheless, as the apparent property owner of 7716 Hampshire Ave. N, Brooklyn Park, MN, it is unclear why Plaintiff couldn't move his daughter into that property if such a need truly exists.

g. Overall, Plaintiff has not established that a *need* exists to move his daughter into the leased premises and, even if such a need existed, Plaintiff has not established that moving his daughter into the leased premises would be his only option.

*Id.* at 1-2 (emphasis in original). The court concluded that the landlord failed to prove that an exception exists in this matter that would allow for an eviction under [Emergency Executive Order 20-79](#). *Id.* at 2. The court dismissed the eviction action with prejudice and expunged it. *Id.* at 2-3.

In [Roggenkamp v. \\_\\_\\_\\_\\_, No. 18-CV-21-95 \(Minn. Dist. Ct. 9th Dist. Feb. 2, 2121\)](#)

[\(Judge Middendorf\) \(Appendix PED-23\)](#), the court concluded that the termination letter for a month-to-month tenancy did not state a need to move into the property and did not comply with the time requirement of [Minn. Stat. § 504B.135\(a\)](#), plaintiffs did not establish the need to evict defendants, and an LLC cannot have a family member with a need to move into rental property.

In [Duke v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1742 \(Minn. Dist. Ct. 4th Dist. Jan. 8, 2021\) \(Referee Sedillos\) \(Appendix PED-30\)](#), the plaintiff purchased the property from the former landlord of the tenant, and then the plaintiff and former landlord provided a one-month notice to terminate the month-to-month tenancy the succeeded the original term lease with the former landlord, stating that the plaintiff planned to move into the property. After the tenant did not move, the plaintiff provided the 7-day notice of intent to file the eviction action under [Emergency Executive Order 20-79](#). The court concluded that the former landlord properly assigned the lease to the plaintiff, the original lease was valid because the former landlord had a valid rental license and the failure of the plaintiff to get a license did not invalidate the lease because the plaintiff intended to live in the property. The tenant claimed retaliation based on the former landlord's attempt to terminate the lease after she requested repairs. The court concluded that the plaintiff's intention to live in the property was a substantial nonretaliatory purpose. The court ordered entry of judgment for the plaintiff for possession of the property, costs, and disbursements, and stayed the writ of recovery for 7 days.

In [Donner v. \\_\\_\\_\\_\\_, No. 62-HG-CV-21-44 \(Minn. Dist. Ct. 2nd Dist. April 22, 2021\) \(Judge Gilligan\) \(Appendix PED-59\)](#), the landlord claimed significant damage, endangering others, and the need to use the property for personal use. The court found that the tenant had cleaned-up the property and that its current condition did not constitute significant damage or serious endangerment, and that the landlord had not proven the need to use the property for his family because the notice did not state that purpose so the tenant did not receive a qualifying notice, the was insufficient evidence about selling the landlord's home, and not payment of rent appeared to be the real reason.

b. CARES Act Covered Properties

The Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024 provides that a lessor (of a covered property) may not evict a tenant after the moratorium expires except on 30 days' notice that may not be given until after the moratorium period. [15 U.S.C. § 9058](#). See discussion, *supra*, at [I.B.](#)

(1) Early Decisions

In [Newcastle Lake LLC v. Carmichael, No. 2020-005609-CC-20 \(Fla. Cir. Ct. 11th Cir. Miami-Dade County Oct. 21, 2020\) \(Judge Murray\) \(Appendix PED-4\)](#), the court found:

- 1) Section 4024 of the CARES ACT applies to "covered dwellings", not covered tenants. 4024(c)(1) provides that a lessor may not require "the tenant to vacate a covered dwelling

unit" until 30 days after a notice to vacate. 4024(a)(1) defines a "covered dwelling" as a dwelling that is occupied by a tenant and is on a covered property. The Plaintiff, New Castle Lake LLC, as a participant in Section 8 Housing Choice Voucher program (42 U.S.C. 1437f), is a covered property.

2) The Plaintiff failed to serve the appropriate 30 day notice to the defendant and instead provided only a 3 day notice to vacate for non-payment of rent\*.

3) \*The Defendant also filed a declaration pursuant to the Notice by the Center for Disease Control and Prevention.

The court granted the tenant's motion for dismissal.

In [\*Nwagwu v. Dawkins\*, 2021 WL 2775065 \(Conn. Sup. Ct. Mar. 2, 2021\) \(unpublished\) \(Appendix PED-67\)](#), the court dismissed eviction action for rent against Section 8 voucher tenant for failing to issue the CARES Act notice.

In [\*Sherwood Auburn LLC v. Pinzon\*, 521 P.3d 212 \(Wash. Ct. App. 2022\) \(Appendix PED-66\)](#), the court held that the notice provision of CARES Act requires that landlords of covered properties provide a 30-day notice to pay rent or vacate premises to tenants prior to commencing an unlawful-detainer action, and landlord's notice to tenants was insufficient for landlord to avail itself of superior court's jurisdiction over its unlawful-detainer action.

In [\*The Redwell LLLP v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-22-6607 \(Minn. Dist. Ct. 4th Dist. Feb. 13, 2023\) \(Appendix PED-68\)](#), the court dismissed and expunged the eviction action for rent against Section 8 voucher tenant in property with federally-backed Fannie Mae mortgage where landlord failed to issued CARES Act notice and failed to provide timely notice to public housing authority of eviction action filing.

## (2) More Recent Decisions

See [\*L. McDonough, F. Fuchs, and M. McCreight, Defending Evictions in Public and Subsidized Housing\*](#) at Slides 16-21.

### c. Termination Notice Required by the Lease

Some leases require termination notices for breach of lease. Failure to provide the notice supports dismissal. See Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.30](#).

### d. Manufactured (Mobile) Home Park Lot Tenancies

Notice is required before filing an eviction action. See Residential Eviction Defense and



Tenant Claims in Minnesota at [VI.F.7.](#) and [VI.G.11.](#)

e. Tenants Following Mortgage Foreclosure or Contract for Deed Cancellation

Notice is required before filing an eviction action. *See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.12.b.](#)

f. Local Ordinances

Some local ordinances require prefiling eviction notices. [Minneapolis Code of Ordinances 244.2060](#) (nonpayment of rent); [St. Louis Park City Code Sec. 8-337](#) (nonpayment of rent or other unpaid financial obligations).

2. Notice of Intention to File Required for All Eviction Actions to Tenants

[Emergency Executive Order 20-79](#) requires all property owners, mortgage holders, or other persons seeking possession on grounds permitted by this Executive Order must provide a written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer. *See* discussion, *supra*, at [I.A.2.b.\(2\).](#)

a. Decisions Holding for the Tenant

In an early decision under [Emergency Executive Order 20-79](#), *Yimer v. \_\_\_\_\_*, No. 27-CV-HC-20-1408 (Minn. Dist. Ct. 4th Dist. Sep. 10, 2020) (Referee Sedillos) (Appendix PED-1), the landlord issued lease termination notices in December of 2019 and June of 2020. The landlord filed an eviction action before issuance of [Emergency Executive Order 20-79](#) alleging nonpayment of rent and failure to vacate after receiving written notice, and amended the eviction action also before issuance of [Emergency Executive Order 20-79](#) to add additional tenants, alleging that the tenants had threatened the landlord's life. After issuance of [Emergency Executive Order 20-79](#), the landlord filed a second amended complaint alleging hold over after a notice to quit and an exception to [Emergency Executive Order 20-79](#) and later filed a third amended complaint alleging that the landlord was proceeding under two exceptions to [Emergency Executive Order 20-79](#) that the tenants the tenants seriously endangered the safety of others and the landlord needed to move into the property.

The court noted:

13. This Court is unaware of any precedent that would support an interpretation that the seven-day written notice required by [EO 20-79](#), could be effective if given prior to the effective date of the Executive Order.



## Public Policy of Seven Day Notice

14. Landlord argues that because she has already started the eviction action, the courts are already involved and requiring additional notice is contrary to the public policy purpose of the Executive Order.

15. The Governor explicitly stated the purpose of the seven-day notice requirement is as follows: “[i]n addition, I am requiring landlords to give residential tenants a 7-day notice of intent to file an eviction to help mitigate the impact upon residential tenants and encourage resolutions without court involvement.” [EO 20-79, p.1.](#)

16. While it is accurate that the court is already involved in this case, Landlord does not address the EO’s purpose to mitigate the impact upon tenants and in particular give them notice of intent to proceed with an eviction under [EO 20-79](#). A public policy argument cannot overcome the plain requirement of the EO that landlords give tenants a seven-day written notice of intent to file an eviction pursuant to [EO 20-79](#).

17. Again the Court is unaware of any precedent that would support an interpretation that a public policy concern would overcome the plain language of [EO 20-79](#)’s seven-day written notice requirement.

18. The Court finds that Landlord did not provide Tenant the seven-day written notice of intent to file an eviction as required by [EO 20-79](#) and therefore have failed to state a claim upon which relief can be granted.

The court dismissed and expunged the action. *Id.* at 3.

In [Henry v. \\_\\_\\_\\_\\_](#), No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) (Appendix PED-2), the court dismissed the first eviction action filed by the landlords for failure to provide the tenants a written notice of intent to file an eviction action. *Id.* at 1-2. The landlord failed in the second eviction action for significant property damage. *Id.* at 6.

In [Dunnigan v. \\_\\_\\_\\_\\_](#), No. 19WS-CV-20-864 (Minn. Dist. Ct. 1st Dist. Dec. 4, 2020) (Judge Perzel) (Appendix PED-5a), the landlord filed a prior residential eviction action but had not provided the tenant the seven-day notice before filing that eviction action, as required by [Emergency Executive Order 20-79](#). The court dismissed the action. *Id.* at 4. The landlord succeeded in the second eviction action for significant property damage. *Id.* at 10.

In [Kluge v. \\_\\_\\_\\_\\_](#), No. 31-CV-20-2602 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) (Appendix PED-15), the court held for the defaulting pro se tenant against the landlord on issues of improper notice to intent to file the eviction action and improper expedited service, finding:

Defendant entered an oral lease to sublease a room in the home. Plaintiffs credibly testified that Defendant, who is subleasing the house, is endangering the safety of others. Defendant abuses heroin and brandished a handgun inside the house. These allegations may allow for an eviction action under [Emergency Executive Order 20-79](#) because Defendant's actions allegedly seriously endanger the safety of other tenants. However, Plaintiffs did not provide written notice of the intent to evict Defendant seven days prior to filing the action as required in [Order 20-79](#). Mr. Koehler referenced text messages from November 6, 10, and 12, 2020 in which he asked Defendant to vacate the premises, but there was no formal notice that he would be evicted if he refused. These text messages are not written notice of intent to evict Defendant and even if they satisfied that requirement, they were sent six days prior to filing, not seven. Plaintiffs did not comply with the notice requirements for an emergency eviction, and the Court cannot issue an eviction order.

Additionally, Plaintiff has not established proper service of the eviction action on Defendant. See [Minn. Stat. § 504B.321](#) ("The summons, in an expedited hearing, shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown."); [Minn. Stat. §504B.331 \(d\)\(1\)-\(d\)\(2\)](#); *Koski v. Johnson*, 837 N.W.2d 739, 744 (Minn. Ct. App. 2013).

*Id.* at 1-2. The court dismissed the eviction action without prejudice and ordered entry of judgment for the tenant. *Id.* at 2.

In [Grover v. \\_\\_\\_\\_\\_](#), No. 19WS-CV-20-998 (Minn. Dist. Ct. 1st Dist. Dec. 22, 2020) (Judge Perzel) (Appendix PED-32), the court dismissed the action without prejudice and granted expungement for failing to provide the 7-day notice.

Other decisions include [Bard v. \\_\\_\\_\\_\\_](#), No. No. 02-CV-20-3913 (Minn. Dist. Ct. 10th Dist. Nov. 4, 2020) (Appendix PED-27) (the court dismissed the action without prejudice where the landlord failed to provide the 7-day notice of intent to file the eviction action under [Emergency Executive Order 20-79](#)); [Park Real Estate Services v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC- 21-15 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2021) (Appendix PED-29) (the court dismissed the action without prejudice for failing to provide the 7-day notice); [Chik-Fufa v. \\_\\_\\_\\_\\_](#), Nos. 27-CV-HC-20-1064 and No. 27-CV-HC-20-1521 (Minn. Dist. Ct. 4th Dist. Sep. 14, 2020) (Appendix PED-45a) (court dismissed the action without prejudice for failing to give the notice).

#### b. Decisions Holding for the Landlord

In [LKE Enterprises, LLC v. \\_\\_\\_\\_\\_](#), No. 31-CV-20-2600 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) (Appendix PED-14), the court held for the landlord against the defaulting pro se tenant. The court found the notice of the intent to file, expedited service proper, and that the tenant seriously endangers the safety of other tenants.

b. Compliance with Executive Order 20-79:

i. Plaintiff provided Notice of Intent to File Eviction to tenant on November 2 by posting on Tenant's door and sliding a copy under his door. Pictures of this notice were filed with the Court. Defendant sent an email to Plaintiff after that, and the content of the message demonstrated he received the notice.

ii. Defendant, by his assaultive actions, seriously endangers the safety of other tenants. He assaulted another tenant and another individual on October 23, 2020.

c. Service: Itasca County Sheriff's Department served tenant with notice of the eviction action and this hearing by posting the documents on his door on November 13, 2020 at 6:50 pm and November 14, 2020 at 11:48 a.m.

Plaintiff was at the property the afternoon of November 14, 2020 and no documents were on the door, suggesting that Defendant had seen and removed them. Plaintiff saw the Defendant in his apartment that afternoon as he had the door open.

Service for expedited procedure is required within 24 hours of the summons being issued unless there is good cause.

A summons was issued about 4:30 on November 13, 2020. Plaintiff gave documents to Sheriff immediately for service, and the Sheriff attempted personal service twice within 24 hours of the issuance of a summons. The summons was also mailed to Defendant. The plaintiff was not out of the area as is normally required for service by posting, but there was a good faith effort to serve Defendant, there is good reason to believe Defendant got actual notice of the proceeding, Defendant poses A risk to other tenants' safety, and there is good cause to excuse personal service within 24 hours of the issuance of the summons.

*Id.* at 1-2. Even though the court found serious endangerment, the court consider the pandemic and stayed the writ.

d. Though an expedited proceeding, the Court finds extraordinary and exigent circumstances that warrant staying the writ for a reasonable period of time. The COVID-19 pandemic and the extent of community spread means that Defendant should have additional time to learn of the Court's decision and additional time to find a safe place to live. The reasonable period of time is until Saturday, November 21, 2020 at 11:59 p.m. Plaintiff may request a Writ of Recovery on Monday, November 23, 2020 if Defendant has not vacated the premise.

*Id.* at 2.

In [Duke v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1742 (Minn. Dist. Ct. 4th Dist. Jan. 8, 2021) (Referee

[Sedillos](#)) ([Appendix PED-30](#)), the plaintiff purchased the property from the former landlord of the tenant, and then the plaintiff and former landlord provided a one-month notice to terminate the month-to-month tenancy the succeeded the original term lease with the former landlord, stating that the plaintiff planned to move into the property. After the tenant did not move, the plaintiff provided the 7-day notice of intent to file the eviction action under [Emergency Executive Order 20-79](#). The court concluded that the former landlord properly assigned the lease to the plaintiff, the original lease was valid because the former landlord had a valid rental license and the failure of the plaintiff to get a license did not invalidate the lease because the plaintiff intended to live in the property. The tenant claimed retaliation based on the former landlord's attempt to terminate the lease after she requested repairs. The court concluded that the plaintiff's intention to live in the property was a substantial nonretaliatory purpose. The court ordered entry of judgment for the plaintiff for possession of the property, costs, and disbursements, and stayed the writ of recovery for 7 days.

C. Minn. Stat. § 504B.171 Claims

Claims under [Minn. Stat. § 504B.171, subdivision 1](#) are exceptions to the eviction suspension. *See* discussion, *supra*, at [I.A.2.b.\(1\)](#).

1. Text of Minn. Stat. § 504B.171, subdivision 1

[504B.171 Covenant of Landlord and Tenant Not to Allow Unlawful Activities.](#)

Subdivision 1. Terms of covenant.

(a) In every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that:

(1) neither will:

(I) unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises;

(ii) allow prostitution or prostitution-related activity as defined in [section 617.80, subdivision 4](#), to occur on the premises or in the common area and curtilage of the premises;

(iii) allow the unlawful use or possession of a firearm in violation of [section 609.66, subdivision 1a](#), [609.67](#), or [624.713](#), on the premises or in the common area and curtilage of the premises; or

(iv) allow stolen property or property obtained by robbery in those premises or in the common area and curtilage of the premises; and

(2) the common area and curtilage of the premises will not be used by either the landlord or licensor or the tenant or licensee or others acting under the control of either to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess a controlled substance in violation of any criminal provision of [chapter 152](#).

(b) In every lease or license of residential premises, whether in writing or parol, the tenant or licensee covenant that the tenant or licensee will not commit an act enumerated under section 504B.206, subdivision 1, paragraph (a), against a tenant or licensee or any authorized occupant.

[Minn. Stat. § 504B.206, Subd. 1\(a\)](#) acts include (1) domestic abuse, as that term is defined under section 518B.01, subdivision 2, (2) criminal sexual conduct under sections [609.342 to 609.3451](#), or (3) harass, as that term is defined under section [609.749, subdivision 1](#).

## 2. Defenses

[Minn. Stat. § 504B.171, subdivision 1](#) provides a defense: “The covenant is not violated when a person other than the landlord or licensor or the tenant or licensee possesses or allows controlled substances in the premises, common area, or curtilage, unless the landlord or licensor or the tenant or licensee knew or had reason to know of that activity.”

Other defenses include that the tenant could not prevent the illegal drugs from being brought on the property under [Minn. Stat. § 609.5317, subd. 3.](#), legal medical marijuana use under Minn. Stat. § 152.32, and waiver of breach. There is a detailed discussion in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.16](#).

## 3. Decisions under Emergency Executive Order 20-79 and Its Predecessors

### a. Decisions Holding for the Tenant

#### (1) Illegal Drug Claims

##### (a) Under Emergency Executive Order 20-14 and 20-23

In [Partners 388 LLC v. \\_\\_\\_\\_\\_, No. 75-CV-20-86 \(Minn. Dist. Ct. 8th Dist. May 8, 2020\) \(Judge Glasrud\) \(Appendix PED-25\)](#), the landlord filed the eviction action under [Emergency Executive Order 20-14](#), claiming drugs and unauthorized guests. The property manager smelled marijuana and the police found a small amount of marijuana. The landlord issued a termination notice a month later, and just after the tenant’s sister obtained a harassment restraining order against the manager. Memorandum at 1.

The court concluded that the eviction appeared retaliatory and pretextual. The court noted that the landlord’s delay demonstrated that the small amount of marijuana was no

imminent or serious concern to the landlord and that Minnesota decriminalized use and possession of a small amount of marijuana. The tenant testified she smoked marijuana in her car, and there was no evidence she smoked on the grounds of the apartment complex. *Id.* at 2-3.

The Model Lease for Subsidized Programs provided that the landlord can terminate the lease for “drug related criminal activity engaged in on or near the premises” or if the landlord determines “that a household member is illegally using a drug.” The court concluded that “off-premises marijuana smoking can or should void a residential subsidized HUD lease.” *Id.* at 3.

The landlord also claimed that the tenant had an unauthorized resident in her apartment based on the father of one of the tenant’s children had been seen regularly and continuously at the apartment after being trespassed by the landlord. The tenant explained that he was her invitee she worked. The court denied the claim, concluding that “One in possession of premises by permission of a tenant who is entitled to possession is not a trespasser but a licensee,” citing *State v. Hoyt*, 304 N.W.2d 884, 890 (Minn. 1981) and *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617, (1984). *Id.* at 3-5.

The court then reviewed the case under [Emergency Executive Order 20-14](#). The court concluded that there was no evidence or claim the safety of other residents was seriously endangered by the tenant’s conduct. The court added that it was “absolutely confident that stem and two roaches are far from what Governor Walz had in mind, however, as he issued his order so as to allow people like the [the tenant’s] ‘household to remain sheltered during the peacetime emergency.’” *Id.* at 6-7.

The court noted it scheduled an expedited hearing based on the affidavit of the landlord’s attorney stated that the tenant had engaged in drug related criminal activity, and had the court known “the activity was so minor and almost innocuous in nature that it was not even criminal, it would not have scheduled the expedited hearing.” *Id.* at 7-9.

The court concluded:

Landlords may consider circumstances surrounding a lease violation. 24 C.F.R. § 966.4(1)(5)(vii)(B) (2019). This landlord really should have done so. The “violations” here are minor, at best. This was not an emergency, and did not qualify to as an exception to the COVID- 19 pandemic eviction moratorium. Attempting to evict defendant for these reasons, under these circumstances, and under the guise of it being a priority eviction is unconscionable.

*Id.* at 9.

The court ordered entry of judgment for the tenant along with costs and disbursements and ordered the landlord to pay a \$500.00 civil penalty into the court under [Minn. Stat.](#)

[§504B.321, subd. 2 \(d\)](#). Order at 3.

In [Tich v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1432 \(Minn. Dist. Ct. 4th Dist. July 24, 2020\) \(Referee Sedillos\) \(Appendix PED-38\)](#), the landlord's friend of 30 years testified that two months earlier when the landlord and tenant had cohabited, he saw the tenant smoking marijuana but did not call the police, although he reported it to child protective services. The tenant's witness testified that when the tenant did not reciprocate the landlord's romantic feelings, the landlord started making false accusations against her. The court found the landlord's witness not credible while finding the tenant's witness credible, noting there was no police action taken against the tenant. The court dismissed the action with prejudice and expunged the file under [Minn. Stat. §§ 484.014 and 504B.345](#).

In [Tich v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1432 \(Minn. Dist. Ct. 4th Dist. July 22, 2020\) \(Referee Sedillos\) \(Appendix PED-38a\)](#), 48 minutes before the scheduled Zoom trial, the landlord's attorney filed a letter requesting a continuance because a critical witness was unavailable. At trial, the attorney said the continuance was necessary because he was not trial counsel, the only indispensable witness was available only by telephone, and they wanted to obtain a child protection report in a case claiming violations of [Minn. Stat. § 504B.171](#). The tenant objected because her attorney had rearranged his schedule for the trial and gathered witnesses. The court denied the motion at trial. The landlord's witness testified, and after close of the landlord's case in chief without the presence of the landlord, the court offered a recess so the landlord's attorney could try to contact the landlord. Following the recess, the landlord's attorney said he could not reach the landlord, but the case could proceed. Following the trial and while the matter was under advisement, the landlord filed a letter asking the court to reopen the record to allow the landlord to testify. The tenant opposed the request. The landlord claimed by affidavit that he could not connect with the remote hearing, but the court noted that he never called the clerk of court for assistance as he was notified in the scheduling order. The court denied the motion.

(b) Under Emergency Executive Order 20-79

In [BBS LLC v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1412 \(Minn. Dist. Ct. 4th Dist. Dec. 2, 2020\) \(Referee Sedillos\) \(Appendix PED-6\)](#), the landlord claimed breach of the statutory covenants not to allow unlawful activities by allowing controlled substances on the property, asserting that the landlord and the authorized handyman smelled marijuana emanating from the property beginning in May 2020. The tenant raised the following defenses: failure to state a claim upon which relief can be granted; failure to state facts sufficient to authorize recovery of the premises under the exceptions included in [Emergency Executive Order 20-79](#); failure to allege facts sufficient to support the allegation that the tenants violated [Minn. Stat. § 504B.171](#); the complaint was retaliatory; discrimination; bad faith; improper service; failure to file a power of attorney; and failure to properly notify the tenants of any grounds for eviction. *Id.* at 1-2.

The court found:

7. Landlord called Gary Stockert as his only witness. Mr. Stockert testified that he has been a handyman at the Property for the approximately four years. Mr. Stockert described the Property as having two units on the main floor and a third unit in the lower level.

8. On May 6, 2020, Mr. Stockert went to the Property to repair a door at Ms. \_\_\_\_\_'s unit. Mr. Stockert testified that Ms. \_\_\_\_\_ was present at the unit, along with her boyfriend. Mr. Stockert testified that he is familiar with the smell and look of marijuana because he has used marijuana in the past. Mr. Stockert testified that he noticed that the Ms. \_\_\_\_\_'s unit and the lower level unit smelled like burned marijuana. Mr. Stockert also testified that he saw a bag of marijuana on the kitchen counter in Ms. \_\_\_\_\_'s unit. Mr. Stockert testified that he never saw anyone smoking marijuana at the Property.

9. Mr. Stockert testified that he did not take any pictures of the marijuana on the counter, he did not talk to the Tenant about the marijuana smell or the bag on the counter, or call the police about marijuana at the Property.

10. Mr. Stockert's testimony was contradicted by his affidavit filed on September 23, 2020, with the Court. In the affidavit, Mr. Stockert swore under oath that he "personally witnessed the use and consumption of marijuana while attempting to make the repairs. Additionally, on May 6th, 2020, I witnessed the open possession of marijuana in the living room of the residence." Aff. of Gary Stockert, ¶ 2 and 3.

11. Ms. \_\_\_\_\_ testified that despite the fact that Ms. Symko and her were on the same lease agreement they had separate units at the Property. Ms. \_\_\_\_\_ testified that Ms. Symko lived in the lower level unit and that Ms. \_\_\_\_\_ did not have a key to the lower unit, and Ms. Symko did not have a key for Ms. \_\_\_\_\_'s upper level unit. Ms. \_\_\_\_\_ stated that she had smelled marijuana coming from the lower unit but she did not know who was in the downstairs unit besides Ms. Symko. Ms. \_\_\_\_\_ stated that Ms. Symko no longer lives at the Property.

12. Ms. \_\_\_\_\_ testified that Mr. Stockert came to fix the door on May 6, 2020, but denies that anyone was smoking marijuana or that she allowed marijuana into her unit. Ms. \_\_\_\_\_ testified that herself, her ten-year old son, and her adult daughter, were in the unit on May 6, 2020.

13. Tenant's daughter, \_\_\_\_\_ testified that herself, Ms. \_\_\_\_\_, Ms. \_\_\_\_\_'s brother, and Ms. \_\_\_\_\_'s son were at the Property on May 6, 2020. Ms. \_\_\_\_\_ testified that she was resting in a bedroom while Mr. Stockert was there fixing the door. Ms. \_\_\_\_\_ testified that no one was smoking marijuana in Ms. \_\_\_\_\_'s unit and that she has never seen marijuana in Ms. \_\_\_\_\_'s unit.

*Id.* at 2-3. The court concluded:



16. While the Court found some of the testimony of Mr. Stockert to be credible, his affidavit and his in court testimony on the subject of marijuana in the Property were clearly in conflict. On the one hand, Ms. Stockert stated that he saw someone consuming marijuana but in court he said he did not see anyone consuming marijuana. As both statements were given under oath the Court finds that Mr. Stockert's testimony as it relates to marijuana in the Property is not credible. Landlord provided no other evidence beyond Mr. Stockert's testimony.

17. Ms. \_\_\_\_\_ and Ms. \_\_\_\_\_'s testimony of the events of May 6, 2020 were similar and the Court finds that their testimony was more credible.

18. The Court finds that Landlord has not proven by a preponderance of the evidence that Tenant violated [Minnesota Statutes section 504B.171, subdivision 1\(a\)\(1\)\(I\)](#) by unlawfully allowing controlled substances in the Property or in the common area and curtilage of the Property.

Order

*Id.* at 3. The court dismissed the eviction action with prejudice and ordered entry of judgment. The court also ordered expungement, concluding 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, citing Minn. Stat. §§ [484.014](#) and [504B.345, subd. 1\(c\)\(2\)](#). *Id.* at 3-4.

In [Aysta Properties, Inc. v. \\_\\_\\_\\_\\_, No. 69VI-CV-20-419 \(Minn. Dist. Ct. 6th Dist. Nov. 13, 2020\) \(Judge Friday\) \(Appendix PED-8\)](#), the landlord alleged illegal drug activity under [Minn. Stat. § 504B.171](#). The court found:

Plaintiff provided circumstantial evidence of drug activity of Defendant through the testimony of another tenant indicating that she overheard talk of drugs, and there was a significant amount of people going in and out of the apartment. Defendant provided circumstantial evidence of a social worker that Defendant had testified negative for controlled substances. This testimony was not persuasive in either establishing that illegal drug activity was occurring or rebutting it.

The only direct evidence of drug presence in the apartment was the testing completed by the owner of the property Doug Aysta. The Court finds this evidence credible, and rejects the assertion of Defendant that the testing was somehow flawed or should be disregarded by the Court. There is no question that methamphetamine residue was found in the apartment. This, however, does not establish that the cause of the positive test is because of the behavior or use, either directly by; or permitted by, Defendant in the residence. Ultimately, for the test to have evidentiary value in establishing Defendant as the responsible party for the positive test, a baseline test showing no presence of methamphetamine would be needed, or some other direct evidence of drug use by Defendant in the residence to corroborate the positive test. Simply put, the court is

without sufficient evidence to conclude that Defendant is responsible for the presence of methamphetamine in the apartment. Thus, the court must dismiss the complaint, and Defendant will remain in possession of the premises, subject to the terms of her lease. Any prejudice resulting from this decision is limited to the claim of illegal drug activity based on the test, and does not prohibit Plaintiff from seeking eviction on a different basis, when permitted, or upon the same basis upon new evidence.

*Id.* at 2-3. The court dismissed the eviction action with prejudice and reserved the issue of expungement for determination upon further motion, evidence, and argument. *Id.* at 1-2.

In [\*Aysta Properties, Inc. v. \\_\\_\\_\\_\\_\*, No. 69VI-CV-20-421 \(Minn. Dist. Ct. 6th Dist. Dec. 14, 2020\) \(Judge Peterson\) \(Appendix PED-9\)](#), the landlord claimed illegal drug activity under [Minn. Stat. § 504B.171](#). The court found:

2. Plaintiff offered Exhibit 1, a Property Evaluation Report dated September 22, 2020, which stated: "A methamphetamine test was conducted and the presence of meth use was detected (it was determined to have 0 on a scale of 1-10 with 10 being no presence and 0 being a strong presence.)"
3. The Report contained photographs of AccuMeth cards from rooms designated "Bathroom I," "Bedroom I," "Family Room," and "Kitchen." Said cards were labeled "9/22/2020."
4. Mr. Nichols and Mr. Aysta explained the process by which the tests were conducted.
5. The Court finds the evidence of the methamphetamine tests to be credible.
6. The methamphetamine tests are the only direct evidence of drug presence in the apartment.
7. Mr. Aysta testified that there was no baseline test showing an absence of methamphetamine in the apartment prior to or at the time of Defendant's assuming tenancy in the apartment.
8. The record lacks evidence establishing the cause of the positive test. There was no direct evidence of drug use by the Defendant to corroborate the positive test.
9. Plaintiff offered circumstantial evidence of drug activity of Defendant through testimony that there was a significant amount of people going in and out of the apartment and through a text message, presumably stating that Ms. \_\_\_\_\_ was going to be given notice by another tenant that Mr. Aysta was collecting "wall swabs" and urinalyses from "all 5 apartments."

10. The text message was not persuasive in establishing that Defendant was responsible for illegal drug activity in the apartment.

11. The Court is without sufficient evidence to conclude by a preponderance of the evidence that Defendant is responsible for the presence of methamphetamine in the apartment.

12. Plaintiff has failed to prove the allegations in the complaint.

*Id.* at 1-2. The court dismissed the eviction action with prejudice and ordered entry of judgment for the tenant. *Id.* at 2-3.

In *IH2 Property Illinois, L.P. v. \_\_\_\_\_*, No. No. 27-CV-HC-20-1438 (Minn. Dist. Ct. 4th Dist. July 28, 2020) (Referee Sedillos) (Appendix PED-26), the landlord claimed marijuana use on the property. The court found that while police officers smelled marijuana from the direction of the home when the tenant was not home, and marijuana was found in the repossessed car of the tenant's personal care attendant, the landlord did not prove by a preponderance of the evidence that the tenant unlawfully allowed controlled substances on the property under Minn. Stat. § 504B.171. The court dismissed the action with prejudice and ordered expungement.

In *Williams v. \_\_\_\_\_*, No. 27-CV-HC-20-1513 (Minn. Dist. Ct. 4th Dist. Oct. 6, 2020) (Judge Miller) (Appendix PED-55), the landlords filed a second eviction action claiming nonpayment of rent and a violation of Minn. Stat. § 504B.171 following dismissal of the first eviction action for lack of enough specificity in the complaint. In the second action, the defendant argued that Emergency Executive Order 20-79 prohibited nonpayment of rent eviction actions and that the named plaintiffs were not owners of the property. The plaintiff amended their complaint to drop the nonpayment of rent claim and to add their trust that owned the property as another plaintiff. Following a trial on the Minn. Stat. § 504B.171 claim, the court found that the plaintiffs did not offer sufficient evidence to connect the smell of marijuana to the defendant. The court dismissed the action with prejudice and ordered expungement and statutory costs.

## (2) Firearm Claims

In *Sela Group, LLC v. \_\_\_\_\_*, No. 27-CV-HC-20-1360 (Minn. Dist. Ct. 4th Dist. July 14, 2020) (Referee Sedillos) (Appendix PED-10), the landlord filed an eviction action under Emergency Executive Order 20-14, the predecessor of Emergency Executive Order 20-79. The landlord alleged violations of Minn. Stat. § 504B.171, subd. 1(a)(1)(iii, iv), and the lease, claiming the adult son defendant of the defendant tenant was in possession of a firearm and ammunition; he was prohibited from possession because of a prior criminal conviction, the firearm was stolen, and he assaulted another resident using the stolen firearm. *Id.* at 1. Court found that landlord had presented sufficient facts to proceed with an eviction action under the exception to the Executive Order. *Id.* at 2.

The landlord and tenant agreed that the son was not a tenant, but a homeless son of the tenant. The court found that the son occasionally visited the property and store some personal property there, and that the police arrested the son for a crime with a gun stolen from the tenant. *Id.* at 2-3.

The court concluded that the son was not a tenant, and the concluded:

8. Landlord failed to prove by a preponderance of the evidence that [the tenant] allowed the unlawful use or possession of a firearm on the premises or in the common area and curtilage of the premises nor did Landlord prove by a preponderance of the evidence that [the tenant] allowed stolen property or property obtained by robbery in her premises or in the common area and curtilage of the premises.

9. The lease agreement states that Tenant shall not engage in any conduct or activities which are illegal, would constitute a nuisance, or will interfere with the comfort and enjoyment of other tenants. Tenant also assumes responsibility for the conduct of her family, guests, other occupants, and any other person affiliated with or related to Tenant. Ex. A, para. 22 to Complaint.

10. Landlord failed to prove by a preponderance of the evidence that based on the March 14, 2020, incident, [the tenant] breached her lease agreement. [The tenant] did not engage in any conduct or activities which are illegal, would constitute a nuisance, or interfered with the comfort and enjoyment of other tenants. Additionally, [the son] was not a guest or a person affiliated with [the tenant] on March 14, 2020. [The tenant] did not have control over [the son] on March 14, 2020; she credibly testified that she was at work at the time of the incident, did not allow [the son] into the apartment on March 14, 2020, did not give [the son] a key to access the unit, and did not allow [the son] to reside with her.

*Id.* at 4-5. The court dismissed the eviction action with prejudice and expunged it under Minn. Stat. §§ [484.014](#) and [504B.345, subd. 1\(c\)\(2\)](#). *Id.* at 5.

b. Decisions Holding for the Landlord

In [Little Earth of United Tribes Housing Corporation v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1517 \(Minn. Dist. Ct. 4th Dist. Sep. 15, 2020\) \(Referee Houghtaling\) \(Appendix PED-31\)](#), the court denied a motion for dismissal, noting that “an allegation of substantial endangerment may require the endangerment to be a present and immediate concern, a violation of the covenants outlined in [Minn. Stat. § 504B.171](#) are ongoing and not modifiable.”

In [Lofgren v. \\_\\_\\_\\_\\_, No. 04-CV-20-1069 \(Minn. Dist. Ct. 9th Dist. April 21, 2020\) \(Judge Benschopf\) \(Appendix PED-33\)](#), the court found that the defendants “possessed and smoked in the apartment and/or the home’s curtilage in violation of [Minn. Stat. § 504B.171, subd. 1 \(1\)\(I\)](#).” The court ordered entry of judgment for the plaintiff for possession of the property along with costs

and disbursements and stayed the writ of recovery for seven days.

#### D. Significant Property Damage Claims

Another eviction suspension exception is where the tenant materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: significantly damages property. *See* discussion, *supra*, at [I.A.2.b.\(1\)](#).

##### 1. Decisions Holding for the Tenant

In [Henry v. \\_\\_\\_\\_\\_](#), No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) ([Appendix PED-2](#)), the court dismissed the first eviction action filed by the landlords for failure to provide the tenants a written notice of intent to file an eviction action. *Id.* at 1-2.

In the second eviction action, the landlords claimed that the tenants significantly damaged the property. The court noted that “Plaintiffs in the case make a number of additional claims, however, our findings must be limited to whether the Defendants caused significant damages to the property because the other claims are barred by the moratorium.” *Id.* at 2.

The claims of significant damage stemmed from accusations that tenants did remodeling work to the property, including damage to a door, unsanitary conditions, and damage to the bathroom that the tenants intended to re-tile before the landlords told them to stop. The tenants claimed that the bathroom was moldy and dangerous, and the damage to the door was because someone tried to break into the house. The tenants’ pictures showed little to no remaining damage and the property appears in at least as good a condition as it was originally, if not substantially better. *Id.* at 2-3.

The court concluded:

7. Across the state, country, and globe, courts are struggling to deal with unprecedented times. There is very little case law on how matters should proceed during a global pandemic. While there is no dispute [Executive Order 20-79](#) governs this action, the executive order lacks detail in many ways. “Significant damage” is not defined in the Executive Order. At the most basic level of context, the Court notes the Merriam-Webster definition of significant: a noticeably or measurably large amount. Additionally, the Executive Order does not speak to what a court should do if tenants had caused damage to the property, but repaired it before the eviction action (the current action) was filed.

8. This Court must decide two narrow issues. First, did the tenants significantly damage the property? If they have not significantly damaged the property this matter must be dismissed because it is unable to proceed under [Executive Order 20-79](#). Second, if the tenants did cause significant damage to the property, but have since rectified the significant damage, can this action still proceed under [Executive Order 20-79](#).

9. The Court concludes that the tenants materially breached the lease when they began demolition and remodel work. During this time, there may have been instances where damage to the property was “significant” as an English dictionary defines it. The demolition of the bathroom floor and tub surround by Defendants without permission are particularly concerning. The demolition work was significant. However, since it appears from the evidence submitted at the hearing that there is no longer any significant damage, the Court will use other context from [Executive Order 20-79](#) to arrive at a legal conclusion on the second issue.

10. The first paragraph of [Executive Order 20-79](#) states that the purpose of [Executive Order 20-14](#), which declared a peacetime emergency, was “to protect the public health by ensuring that Minnesotans were stably housed during the COVID-19 pandemic”. The order goes on to say that moratorium on evictions “have been crucial to protect public health by promoting Minnesotans’ housing stability and preventing displacement during the COVID-19 pandemic”. The exceptions for residential evictions in [Executive Order 20-79](#) were created to “continue to strike a balance between the crucial importance of maintaining public health and stability for residential tenants, the economic impacts of the COVID-19 pandemic on tenants, and the interests of housing providers to maintain and protect their properties”.

11. A court cannot operate in a bubble. The COVID-19 pandemic is worsening throughout the country and in Minnesota. Infection rates are on the rise. The underlying purpose of this eviction moratorium is to protect the health and safety of not only tenants of rental units, but those elsewhere across the state. Tenants evicted from housing often move around, perhaps to family or friends’ houses, thus increasing travel and the potential for infection spread. The Court sympathizes with landlords and property managers across the state who do not have the options to regain possession they did before the pandemic and how this may be affecting their livelihood. The Court understands that the Plaintiffs in this case did not give Defendants permission to remodel any part of the property and in fact told them to stop. Plaintiffs will have remedies in conciliation court and housing court available to them once the eviction moratorium is lifted.

12. In this specific case, any significant damage to the property caused by the Defendants has now been rectified and balancing that fact against the public policy considerations in the Executive Order leads the Court to dismiss this action as unable to proceed due to [Executive Order 20-79](#).

*Id.* at 3-5. The court dismissed the action with prejudice. *Id.* at 6.

In [Benolken v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-20-624 (Minn. Dist. Ct. 2nd Dist. Nov. 30, 2020) (Judge Nelson) (Appendix PED-3), the landlord claimed that the tenant caused significant damage to the subject property. The court found:

Plaintiff offered evidence of minor damage to the subject property during the time Defendant has lived there, including a refrigerator handle missing, a kitchen sink handle being inverted, and dog feces being found in the subject property on one occasion. Plaintiff also offered evidence of potentially significant damage to the subject property, including credible testimony of damage to doors in the subject property and that some flooring in the subject property needs to be replaced. However, there is no evidence in the record to show the expected or incurred expense of repairing the damaged doors and flooring, or to show the extent of that damage. Defendant provided Plaintiff with a damage deposit, but Plaintiff offered no evidence that the damage to the subject property exceeds the amount of the damage deposit. There is no evidence that Defendant intentionally or willfully damaged the subject property. Because the scope of the damage to flooring and doors in the subject property is unclear, Plaintiff has not proven Defendant caused significant damage to the property. Plaintiff has proven that Defendant's unit is not kept clean, and that Defendant kept dogs on the property for several months in violation of the lease terms, however this does not rise to the level of the narrow exception to the moratorium. Plaintiff has failed to meet her burden.

*Id.* at 1. The court entered judgment for the tenant. *Id.* at 2.

In [Raintree Associates LLP v. \\_\\_\\_\\_\\_](#), No. 69VI-CV-20-413 (Minn. Dist. Ct. 6th Dist. Dec. 1, 2020) (Judge Anderson) (Appendix PED-7), the landlord argued that the tenant's alleged damage to a neighboring tenant's door constituted a significant damage to property. The court concluded:

While Plaintiff presented evidence indicating the Defendant damaged the door, the damage does not constitute significant damage to property. Similarly, Defendant's alleged conduct toward the neighbor did not constitute a violation of [Minnesota Statutes § 504B.171 Subd. 1](#) or seriously endanger the safety of others. Therefore, the Court has no alternative but to suspend the present action until such time as the Governor's Executive Order is modified or expires.

*Id.* at 2-3.

In [Donner v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-21-44 (Minn. Dist. Ct. 2nd Dist. April 22, 2021) (Judge Gilligan) (Appendix PED-59), the landlord claimed significant damage, endangering others, and the need to use the property for personal use. The court found that the tenant had cleaned-up the property and that its current condition did not constitute significant damage or serious endangerment, and that the landlord had not proven the need to use the property for his family because the notice did not state that purpose so the tenant did not receive a qualifying notice, the was insufficient evidence about selling the landlord's home, and not payment of rent appeared to be the real reason.

## 2. Decisions Holding for the Landlord



In [Dunnigan v. \\_\\_\\_\\_\\_](#), No. 19WS-CV-20-864 (Minn. Dist. Ct. 1st Dist. Sep. 22, 2020) (Judge Lutz) (Appendix PED-5), the landlord filed an eviction action claiming two exceptions to [Emergency Executive Order 20-79](#): (1) significant property damage to the unit, attaching showing a broken window, broken counter, broken woodwork and photos of what appears to be extensive mold, and (2) additional potential people living in the residence who are not residential tenants. The court concluded, “Assuming these facts alleged in the Complaint are true, the Complaint states facts which fall within exceptions to the moratorium in [EO 20-79](#). An Eviction SUMMONS SHALL ISSUE.”

Following a trial, the court issued its order. [Dunnigan v. \\_\\_\\_\\_\\_](#), No. 19WS-CV-20-864 (Minn. Dist. Ct. 1st Dist. Dec. 4, 2020) (Judge Perzel) (Appendix PED-5a). The landlord and tenant had a lease that prohibited tenant damage to the property and provided for eviction for material lease violations. The landlord filed a prior residential eviction action but had not provided the tenant the seven-day notice before filing that eviction action, as required by [Executive Order 20-79](#). The court dismissed the action. *Id.* at 4.

In this eviction action, the landlord provided notice of intent to file a residential eviction action seven days before filing the eviction complaint. *Id.* at 6. The court found the landlord more credible than the tenant, and found the following damage: missing and broken cabinet drawer fronts in the kitchen, a broken bay window in the living room, the cracked and stained vanity in the lower-level bathroom, dirt, mildew, and mold in the same bathroom, a second window in the same bay of windows had been broken and replaced, ineffectually by the tenant with the assistance of a handyman, the garage door in need of repair that would cost in excess of \$2,400.00, debris and a roof-line gutter next to the garage, the kitchen butcher-block countertop with extensive cutting marks, a ceiling light fixture dangling by the wires and without the globe, broken glass on the inside of the front bay window, dents on the side of the refrigerator as well as damage to the refrigerator’s gasket, numerous spherical dents to the lower portion of the back door, even though the door was newly replaced following damage to the old door in the fall of 2019, and that all damage was not ordinary wear and tear. *Id.* at 3-6. The court also found that the tenant willingly allowed others to occupy and use areas of the residence such as the garage. *Id.* at 5.

The court analyzed the meaning of significant damage.

5. “Significant damage” is not defined in Minnesota Statute, nor has case law addressed the meaning of this phrase in relation to an unlawful detainer action brought during the existence of the relevant Executive Order. Minnesota law provides that “words and phrases are construed according to rules of grammar and according to their common and approved usage; but technical words and phrases and such others as have acquired a special meaning . . . are construed according to such special meaning or their definition.” [Minn. Stat. § 645.08\(1\)](#).

6. *Merriam-Webster* defines “significant” as “of a noticeably or measurably large



amount” or “probably caused by something other than mere change”. *The Merriam-Webster Dictionary* (New ed. 2016). “Significant” is defined in *Black’s Law Dictionary*; however, that definition is unhelpful in the context of this case.

7. “Damage” has many different definitions and is referenced in many different contexts. The “relevant definition of a term depends on the context in which the term is used.” *Getz v. Pearce*, 934 N.W.2d 347, 355 (Minn. 2019) (quoting *State v. Nelson*, 842 N.W.2d 433, 437 n.2 (Minn. 2014)); *see also Wong v. Am. Family Mut. Ins. Co.*, 576 N.W.2d 742, 745 (Minn. 1998) (A court may ascertain the meaning of doubtful words “by reference to their association with other associated words and phrases” (quotation omitted)). The general definition of “damage” in *Black’s Law Dictionary* defines it as “[l]oss or injury to . . . property”. *Black’s Law Dictionary* (11th ed. 2019). Because the definition of damage is general, its meaning is restricted by the word “significant.” [Minn. Stat. § 645.08\(3\)](#) (“general words are construed to be restricted in their meaning by preceding particular words”).

8. Therefore, significant damage to property, as required by [EO 20-79](#), is damage of a noticeably or measurably large amount, and excludes obscure or indeterminate damages because those would not effectuate the executive’s intent with [EO 20-79](#) to limit residential eviction actions during the pandemic.

9. The Court considers the damage in total. *See e.g. Cameron v. Evans*, 62 N.W.2d 793, 799 (Minn. 1954) (“Peculiar facts of each case must serve to measure damages”); *Rinkel v. Lee’s Plumbing & Heating Co.*, 99 N.W.2d 779, 783 (Minn. 1959) (“When property is not totally destroyed, the ordinary measure of damages is the difference in value before and after the loss, or the cost of restoration, whichever is less.”)

*Id.* at 7-8. The court concluded:

10. Here, the damage in total is significant, constitutes a material violation of the Lease provision that Tenant shall not damage the property, and includes, but is not limited to:

- a. a bent and broken double garage door following removal not authorized by Landlord;
- b. a broken glass panel in the bay window;
- c. a cracked lower-level bathroom vanity;
- d. removed, broken, and/or now non-existent cabinet drawer fronts in the kitchen;
- e. a dented back door;
- f. a removed gutter;
- g. a dented and gasket-damaged refrigerator; and
- h. a damaged basement light fixture.

11. Accordingly, Tenant has materially violated Lease and has not vacated Residence.

*Id.* at 9. The court added:

13. Waiver is an affirmative defense to an unlawful detainer action. *Priordale Mall Investors v. Farrington*, 411 N.W.2d 582, 583 (Minn. App. 1987). Generally, a landlord who accepts rent while knowing that breaches of the lease are occurring waives the right to rely on those breaches in an action for unlawful detainer. *Id.* at 584. A principal reason for the waiver rule is to provide a sense of security for the tenant that the lease remained in effect. *Id.*

14. Waiver is inapplicable here, as Landlord did not accept rent (nor did Defendant offer rent) from June 2020 forward, and Landlord was not on notice of the instant damage until June 2020.

*Id.* at 10. The court ordered entry of judgment and issuance of a writ to the landlord. *Id.*

In [\*Munger Terrace, LLLP v. \\_\\_\\_\\_\\_\*, No. 69DU-CV-20-1348 \(Minn. Dist. Ct. 6th Dist. Sep. 29, 2020\) \(Judge Neo\) \(Appendix PED-12\)](#), the landlord claimed that the tenant significantly damaged the property. The court found:

While the Court understands that Defendant claims he was the victim of a break-in, the fact that the damage was (1) to BOTH the front and back doors, (2) per testimony occurred on at least 2 occasions, (3) that Defendant reported missing property but there is no evidence that he ever contacted law enforcement, (4) there is no evidence that any neighboring units experienced this problem, and (5) combined with the numerous admitted reports of many people coming and going from his unit, the Court finds it appropriate to hold the Defendant liable for this damage, which the evidence demonstrates will exceed \$2,000 despite the fact that to date the doors are not replaced. Plaintiff also presented evidence through photographs of damage to the interior of the unit including dog feces on the carpet and a unit kept in generally very poor condition.

....

In this case Plaintiff proved, up until January 2020, an ongoing pattern of property damage, noise complaints and a highly problematic tenancy, including thousands of dollars in damage to not one but two entry doors. While this Court limited evidence to that which occurred prior to the January 7, 2020, termination notice under applicable HUD regulations, that is not to say the Court cannot look at all the circumstances to determine whether eviction remains warranted in September 2020 under the most recent EO. Two neighbors testified. Both described fights, screaming, slamming doors and noises at all hours. Ms. Johnson expressed fear of Mr. \_\_\_\_\_. Ms. Ruona did not express fear but still described “lots of yelling and screaming” and numerous other issues. These were not isolated incidents. They went on for months. Noise complaints are not grounds for eviction in and of themselves but demonstrate a pattern of conduct supporting the case

coming before the Court for trial.

On this record the Court finds Plaintiff proved what was required to evict under [EO 20-79](#). There is no set period of time where incidents become “too stale.” The analysis is case-by-case. The eviction notice was sent less than 90 days before the pandemic hit in March when almost all eviction activity ground to a halt. Plaintiff then filed the case once the standing order allowed them to proceed. Had the doors been damaged in 2017 or 2018 the analysis is likely different. They were damaged in late 2019. Defendant was arrested for a domestic on January 4, 2020. The eviction notice issued on January 7, 2020. Judgment is granted for Plaintiff, subject to a 7-day stay pursuant to [Minn. Stat. 504B.345, Subd. 2](#), so that Defendant may locate alternate arrangements for him and his pet.

*Id.* at 4-5.

#### E. Substantial Endangerment Claims

Another eviction suspension exception is where the tenant (1) seriously endangers the safety of other residents, or (2) materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: seriously endangers the safety of others. *See* discussion, *supra*, at [I.A.2.b.\(1\)](#).

In [Little Earth of United Tribes Housing Corporation v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1517 (Minn. Dist. Ct. 4th Dist. Sep. 15, 2020) (Referee Houghtaling) (Appendix PED-31), the court denied a motion for dismissal, noting that “an allegation of substantial endangerment may require the endangerment to be a present and immediate concern, a violation of the covenants outlined in [Minn. Stat. § 504B.171](#) are ongoing and not modifiable.”

In [Fairmont Housing and Redevelopment Authority v. Winter](#), 2021 WL 5441936, \_\_\_\_\_ N.W.2d \_\_\_\_\_ (Minn. Ct. App. 2021), the court held that [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) terminated the executive orders but did not extinguish rights and defenses accrued under them. In reviewing a substantial endangerment claim under [Emergency Executive Order 20-79](#), it concluded that did not require a current or ongoing endangerment. 2021 WL 5441936 at \*5-6. The court affirmed the district court’s decision for the public housing authority, noting:

Here, the district court concluded that "Winter and Marti seriously endangered the lives of themselves and other residents when they knew that their guests had tampered with the lockbox ... and they failed to notify the landlord for a month." The district court subsequently said that "when Winter and Marti failed to notify Fairmont HRA of the broken lockbox, it was a material violation of the lease agreement that endangered the safety of the residents." Because the district court noted a serious violation of a material term of the lease, after concluding that a "serious endangerment" existed, we are satisfied

that the district court concluded that Winter and Marti seriously violated a material term of their lease.

*Id.* at \*6.

1. Decisions Holding for the Tenant

In [Olson Property Investments v. \\_\\_\\_\\_\\_](#), No. A20-1073 (Minn. Ct. App. Sept. 1, 2020) ([Appendix PED-17](#)), the Minnesota Court of Appeals issued an unpublished order denying the landlord's petition for a writ of mandamus to compel the district court to issue a summons in an eviction action under the predecessors to [Emergency Executive Order 20-79](#). The court reviewed the facts alleged by the landlord.

According to the petition, petitioner gave notice of nonrenewal of the parties' residential lease on May 30, 2020 based on "illegal conduct by Tenants that seriously endangered the lives of another resident and the Landlord," but petitioner "chose not to bring the eviction until the lease expired by its natural expiration" on July 31, 2020. On August 3, 2020, petitioner filed an eviction complaint against respondents alleging that respondents (1) harassed and threatened another tenant, causing that tenant to move out, (2) harassed petitioner's agents, causing them to obtain ex parte harassment restraining orders (HROs) against respondents, and (3) made false allegations against petitioner's agents. The complaint states that expedited proceedings are not requested. See [Minn. Stat. § 504B.321, subd. 2\(a\) \(2018\)](#) ) (providing in relevant part that, in action based on tenant "causing a nuisance or other illegal behavior that seriously endangers the safety of other residents," the plaintiff "shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required").

*Id.* at 2-3. The court concluded that the landlord had not pled with enough specificity.

Even under a rule 12.02( e) standard, which petitioner argues should be applied, speculative allegations are insufficient. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 558 (Minn. 2003) (rejecting as insufficient allegations that social security numbers are still being shared or are generally accessible because allegations were "mere speculation."). And the district court need not accept as true, for purposes of a rule 12.02( e) motion, legal conclusions in the complaint. *Walsh v. US. Bank, NA.*, 851 N.W.2d 598, 603 (Minn. 2014) (noting that courts are "not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim"); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) ("A plaintiff must provide more than labels and conclusions.").

We construe the exception in EO Nos. [20-14](#), [20-73](#) for "cases where the tenant seriously endangers the safety of other residents" or "others on the premises" to contemplate circumstances in which physical safety is at current risk, warranting expedited processing.

Assuming without deciding that a rule 12.02(e) standard applies to the determination whether to allow an eviction action to proceed during the peacetime emergency under EO [20-14](#), [20-73](#), petitioner has not shown that the factual allegations against respondents in the amended complaint meet that threshold. We therefore conclude that petitioner has not shown that the district court had a duty clearly required by [Minn. Stat. § 504B.321, subd. 1](#), to issue the summons to respondents and schedule a hearing on the amended complaint.

*Id.* at 3-4.

Afterward, in [Olson Property Investments v. \\_\\_\\_\\_\\_, No. 19AV-CV-20-1479 \(Minn. Dist. Ct. 1<sup>st</sup> Dist. June 7, 2021\) \(Judge Wahi\) \(Appendix PED-57\)](#), the district court took no action in the case until March 21 when it notified the parties of a possible conditional dismissal. In response, the landlord filed an amended answer. The court concluded that the landlord failed to plead sufficient facts to show an exception under [Emergency Executive Order 20-79](#), noting (1) the landlord alleged the defendants harassed non-tenants, (2) the landlord alleged that one of the defendants violated a harassment restraining order filed by the non-tenants and was arrested and charged, (3) the landlord alleged that the defendants stomped on their floor and shut off water to harass the downstairs tenants, (4) the complaint did not reference the lease or a material violation of it to support a substantial endangerment claim against non-residents, and (5) the allegations did not rise to the level of placing other residents' current physical safety at risk. The court dismissed the action without prejudice.

In [Partners 388 LLC v. \\_\\_\\_\\_\\_, No. 75-CV-20-86 \(Minn. Dist. Ct. 8th Dist. May 8, 2020\) \(Judge Glasrud\) \(Appendix PED-25\)](#), the landlord filed the eviction action under [Emergency Executive Order 20-14](#), claiming drugs and unauthorized guests. The property manager smelled marijuana and the police found a small amount of marijuana. The landlord issued a termination notice a month later, and just after the tenant's sister obtained a harassment restraining order against the manager. Memorandum at 1.

The court concluded that the eviction appeared retaliatory and pretextual. The court noted that the landlord's delay demonstrated that the small amount of marijuana was no imminent or serious concern to the landlord and that Minnesota decriminalized use and possession of a small amount of marijuana. The tenant testified she smoked marijuana in her car, and there was no evidence she smoked on the grounds of the apartment complex. *Id.* at 2-3.

The Model Lease for Subsidized Programs provided that the landlord can terminate the lease for "drug related criminal activity engaged in on or near the premises" or if the landlord determines "that a household member is illegally using a drug." The court concluded that "off-premises marijuana smoking can or should void a residential subsidized HUD lease." *Id.* at 3.

The landlord also claimed that the tenant had an unauthorized resident in her apartment

based on the father of one of the tenant's children had been seen regularly and continuously at the apartment after being trespassed by the landlord. The tenant explained that he was her invitee she worked. The court denied the claim, concluding that "One in possession of premises by permission of a tenant who is entitled to possession is not a trespasser but a licensee," citing *State v. Hoyt*, 304 N.W.2d 884, 890 (Minn. 1981) and *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617, (1984). *Id.* at 3-5.

The court then reviewed the case under [Emergency Executive Order 20-14](#). The court concluded that there was no evidence or claim the safety of other residents was seriously endangered by the tenant's conduct. The court added that it was "absolutely confident that stem and two roaches are far from what Governor Walz had in mind, however, as he issued his order so as to allow people like the [the tenant's] 'household to remain sheltered during the peacetime emergency.'" *Id.* at 6-7.

The court noted it scheduled an expedited hearing based on the affidavit of the landlord's attorney stated that the tenant had engaged in drug related criminal activity, and had the court known "the activity was so minor and almost innocuous in nature that it was not even criminal, it would not have scheduled the expedited hearing." *Id.* at 7-9.

The court concluded:

Landlords may consider circumstances surrounding a lease violation. 24 C.F.R. § 966.4(1)(5)(vii)(B) (2019). This landlord really should have done so. The "violations" here are minor, at best. This was not an emergency, and did not qualify to as an exception to the COVID- 19 pandemic eviction moratorium. Attempting to evict defendant for these reasons, under these circumstances, and under the guise of it being a priority eviction is unconscionable.

*Id.* at 9.

The court ordered entry of judgment for the tenant along with costs and disbursements and ordered the landlord to pay a \$500.00 civil penalty into the court under [Minn. Stat. §504B.321, subd. 2 \(d\)](#). Order at 3.

In [Supportive Living Solutions v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1771 \(Minn. Dist. Ct. 4th Dist. Jan. 4, 2021\) \(Appendix PED-53\)](#), the landlord claimed that the tenant allowed guests to stay in her apartment when she was gone, and claimed that they were involved in a homicide on the property. The court found that one person who committed the homicide had previously been a guest at her apartment but that the landlord failed to prove that he was her guest when the crime occurred, and that the other person had not committed the crime and had not seriously endangered others. The court granted entry of judgment for the tenant and awarded costs and disbursements.

In [Donner v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-21-44 (Minn. Dist. Ct. 2nd Dist. April 22, 2021) (Judge Gilligan) (Appendix PED-59), the landlord claimed significant damage, endangering others, and the need to use the property for personal use. The court found that the tenant had cleaned-up the property and that its current condition did not constitute significant damage or serious endangerment, and that the landlord had not proven the need to use the property for his family because the notice did not state that purpose so the tenant did not receive a qualifying notice, the was insufficient evidence about selling the landlord's home, and not payment of rent appeared to be the real reason.

## 2. Decisions Holding for the Landlord

In [Fairmont Housing and Redevelopment Authority v. Winter](#), 2021 WL 5441936, \_\_\_\_\_ N.W.2d \_\_\_\_\_ (Minn. Ct. App. 2021), the court held that [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) terminated the executive orders but did not extinguish rights and defenses accrued under them. In reviewing a substantial endangerment claim under [Emergency Executive Order 20-79](#), it concluded that did not require a current or ongoing endangerment. 2021 WL 5441936 at \*5-6. The court affirmed the district court's decision for the public housing authority, noting:

Here, the district court concluded that "Winter and Marti seriously endangered the lives of themselves and other residents when they knew that their guests had tampered with the lockbox ... and they failed to notify the landlord for a month." The district court subsequently said that "when Winter and Marti failed to notify Fairmont HRA of the broken lockbox, it was a material violation of the lease agreement that endangered the safety of the residents." Because the district court noted a serious violation of a material term of the lease, after concluding that a "serious endangerment" existed, we are satisfied that the district court concluded that Winter and Marti seriously violated a material term of their lease.

*Id.* at \*6.

In [LKE Enterprises, LLC v. \\_\\_\\_\\_\\_](#), No. 31-CV-20-2600 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) (Appendix PED-14), the court held for the landlord against the defaulting pro se tenant. The found the notice of the intent to file, expedited service proper, and that the tenant seriously endangers the safety of other tenants.

### b. Compliance with [Executive Order 20-79](#):

I. Plaintiff provided Notice of Intent to File Eviction to tenant on November 2 by posting on Tenant's door and sliding a copy under his door. Pictures of this notice were filed with the Court. Defendant sent an email to Plaintiff after that, and the content of the message demonstrated he received the notice.



ii. Defendant, by his assaultive actions, seriously endangers the safety of other tenants. He assaulted another tenant and another individual on October 23, 2020.

c. Service: Itasca County Sheriff's Department served tenant with notice of the eviction action and this hearing by posting the documents on his door on November 13, 2020 at 6:50 pm and November 14, 2020 at 11:48 a.m.

Plaintiff was at the property the afternoon of November 14, 2020 and no documents were on the door, suggesting that Defendant had seen and removed them. Plaintiff saw the Defendant in his apartment that afternoon as he had the door open.

Service for expedited procedure is required within 24 hours of the summons being issued unless there is good cause.

A summons was issued about 4:30 on November 13, 2020. Plaintiff gave documents to Sheriff immediately for service, and the Sheriff attempted personal service twice within 24 hours of the issuance of a summons. The summons was also mailed to Defendant. The plaintiff was not out of the area as is normally required for service by posting, but there was a good faith effort to serve Defendant, there is good reason to believe Defendant got actual notice of the proceeding, Defendant poses A risk to other tenants' safety, and there is good cause to excuse personal service within 24 hours of the issuance of the summons.

*Id.* at 1-2. Even though the court found serious endangerment, the court consider the pandemic and stayed the writ.

d. Though an expedited proceeding, the Court finds extraordinary and exigent circumstances that warrant staying the writ for a reasonable period of time. The COVID-19 pandemic and the extent of community spread means that Defendant should have additional time to learn of the Court's decision and additional time to find a safe place to live. The reasonable period of time is until Saturday, November 21, 2020 at 11:59 p.m. Plaintiff may request a Writ of Recovery on Monday, November 23, 2020 if Defendant has not vacated the premise.

*Id.* at 2.

In [Minnesota Parks, LLC v. \\_\\_\\_\\_\\_, No. 31-CV-20-1686 \(Minn. Dist. Ct. 9th Dist. Aug. 5, 2020\) \(Judge Chandler\) \(Appendix PED-13\)](#), the court held for the landlord against the defaulting pro se tenant, finding:

Defendant possessed a dog on the premises which caused harm to others; attempted to bite persons in the neighborhood; it was not properly restrained, it roamed the neighborhood; it would get loose when Defendant tried to keep the dog enclosed. Plaintiff then sent the Notice to Vacate to Defendant because of this behavior; Defendant failed to



leave within the 30 days.

*Id.* at 1.

In [Vailwood, LLC v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-20-920 (Minn. Dist. Ct. 2nd Dist. Jan. 6, 2021) (Judge Nelson) (Appendix PED-24), the court found that altercations between the tenant and the property manager in June and August 2020 and other claims of the landlord were not material lease violations. The court focused on November 20, 2020 and found the property manager credible in testifying that the tenant aggressively yelled at him, threatened him, and threatened to get his gun, resulting in the manager having a hard time breathing due to fear and nerves. The court found the tenant not credible in his testimony that the manager instigated and escalated the incident. The court concluded that the incident was a material violation of the lease, and ordered that judgment be entered for the landlord and stayed the writ of recovery for one week.

#### F. Landlord Family Residency Claims

The landlord family residency has two elements: (1) providing a lease termination notice, and (2) proving the *need* to move the property owner or property owner's family member(s) into the property and where the property owner or property owner's family member(s) move into the property within 7 days after it is vacated by the tenant." See discussion, *supra*, at [I.A.2.b.\(1\)](#).

##### 1. LLCs Do Not Have Family Members

In [Roggenkamp v. \\_\\_\\_\\_\\_](#), No. 18-CV-21-95 (Minn. Dist. Ct. 9th Dist. Feb. 2, 2121) (Judge Middendorf) (Appendix PED-23), the court concluded that the termination letter for a month-to-month tenancy did not state a need to move into the property and did not comply with the time requirement of [Minn. Stat. § 504B.135\(a\)](#), plaintiffs did not establish the need to evict defendants, and an LLC cannot have a family member with a need to move into rental property.

##### 2. Decisions Holding for the Tenant on Issue of Need

In [Borsay v. \\_\\_\\_\\_\\_](#), No. 02-CV-20-4224 (Minn. Dist. Ct. 10th Dist. Dec. 14, 2020) (Judge Logering) (Appendix PED-11), the landlord alleged that he needed to move his minor daughter, age 14, into a room in the property. The court found:

d. Plaintiff's daughter is currently living with him, although he asserts that she does not have her own room. Based upon Plaintiff's testimony, his daughter came to live with him in July 2020. This is not a case where the property owner or property owner's family member is homeless or will become homeless.

e. It is also evident that a room became vacant at the property located at 491 57th Ave. NE, Fridley, MN 55432, in September 2020. However, rather than moving his daughter

into the vacant room, Plaintiff stated that his nephew to move into the vacant room.

f. Additionally, it is apparent that Plaintiff owns another property at 7716 Hampshire Ave. N, Brooklyn Park, MN. Plaintiff asserts that his ex-wife lives at that property. Nonetheless, as the apparent property owner of 7716 Hampshire Ave. N, Brooklyn Park, MN, it is unclear why Plaintiff couldn't move his daughter into that property if such a need truly exists.

g. Overall, Plaintiff has not established that a *need* exists to move his daughter into the leased premises and, even if such a need existed, Plaintiff has not established that moving his daughter into the leased premises would be his only option.

*Id.* at 1-2 (emphasis in original). The court concluded that the landlord failed to prove that an exception exists in this matter that would allow for an eviction under [Emergency Executive Order 20-79](#). *Id.* at 2. The court dismissed the eviction action with prejudice and expunged it. *Id.* at 2-3.

In [Roggenkamp v. \\_\\_\\_\\_\\_](#), No. 18-CV-21-95 (Minn. Dist. Ct. 9th Dist. Feb. 2, 2021) (Judge Middendorf) (Appendix PED-23), the court concluded that the termination letter for a month-to-month tenancy did not state a need to move into the property and did not comply with the time requirement of [Minn. Stat. § 504B.135\(a\)](#), plaintiffs did not establish the need to evict defendants, and an LLC cannot have a family member with a need to move into rental property.

In [Donner v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-21-44 (Minn. Dist. Ct. 2nd Dist. April 22, 2021) (Judge Gilligan) (Appendix PED-59), the landlord claimed significant damage, endangering others, and the need to use the property for personal use. The court found that the tenant had cleaned-up the property and that its current condition did not constitute significant damage or serious endangerment, and that the landlord had not proven the need to use the property for his family because the notice did not state that purpose so the tenant did not receive a qualifying notice, there was insufficient evidence about selling the landlord's home, and not payment of rent appeared to be the real reason.

In [Orr v. \\_\\_\\_\\_\\_](#), No. 18-CV-21-2162 (Minn. Dist. Ct. 9th Dist. Aug. 6, 2021) (Referee Davies) (Appendix PED-65), the plaintiff filed the eviction action when Emergency Executive Order 20-79 was in effect but the court heard the trial in August 2021. The parties had been in a long-term domestic relationship. The plaintiff purchased the property in 2017 where he and the defendant resided with their child. The parties did not have a lease and the defendant did not pay rent. The defendant obtained a domestic abuse no contact order against the plaintiff and the plaintiff moved into his parents' house. The plaintiff claimed the need to move back to the property, illegal drugs, and substantial property damage. The court found that the plaintiff did not prove he needed to leave his parents' house, there was no evidence the defendant used illegal drugs, the defendant had removed sheetrock damaged by the plaintiff, and the defendant would be homeless if evicted. The court concluded that the plaintiff had not proved grounds for eviction

under [Emergency Executive Order 20-79](#) or [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#). The court dismissed the action with prejudice and ordered entry of judgment for the defendant.

### 3. Decisions Holding for the Landlord on Issue of Need

In [Kelley v. \\_\\_\\_\\_\\_](#), No. 11-CV-19-2181 (Minn. Dist. Ct. 9th Dist. Oct. 29, 2020) (Judge Strandlie) (Appendix PED-16), the court held for the landlord against the pro se tenant on the need for family member residency, finding:

Plaintiffs previously gave 30 notice to vacate however [sic] matter was stayed pursuant to Governor's Executive Order. Plaintiff testified under oath that a family member is prepared to move into the premises. Court Orders that this is a sufficient 30 day notice and orders eviction stayed until November 30, 2020. Plaintiff [sic] testified that said family member is prepared to move into the premises within 7 days of vacation by Def's.

*Id.* at 1. The court also found rent due for year of \$6,180.00 but did not rule on the claim of controlled substances on the premises. *Id.* at 1, 3. The court stayed the writ of recovery for a month. *Id.* at 1-2.

In [Duke v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1742 (Minn. Dist. Ct. 4th Dist. Jan. 8, 2021) (Referee Sedillos) (Appendix PED-30), the plaintiff purchased the property from the former landlord of the tenant, and then the plaintiff and former landlord provided a one-month notice to terminate the month-to-month tenancy the succeeded the original term lease with the former landlord, stating that the plaintiff planned to move into the property. After the tenant did not move, the plaintiff provided the 7-day notice of intent to file the eviction action under [Emergency Executive Order 20-79](#). The court concluded that the former landlord properly assigned the lease to the plaintiff, the original lease was valid because the former landlord had a valid rental license and the failure of the plaintiff to get a license did not invalidate the lease because the plaintiff intended to live in the property. The tenant claimed retaliation based on the former landlord's attempt to terminate the lease after she requested repairs. The court concluded that the plaintiff's intention to live in the property was a substantial nonretaliatory purpose. The court ordered entry of judgment for the plaintiff for possession of the property, costs, and disbursements, and stayed the writ of recovery for 7 days.

In [Duke v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1742 (Minn. Dist. Ct. 4th Dist. Jan. 8, 2021) (Referee Sedillos) (Appendix PED-46), the court found that the new owner of the property purchased it so she and her daughter could reside on it, lease allowed the former owner to assign the lease, the new owner did not obtain a rental license but city staff testified she would not need one the impending owner-occupancy, and the landlord's purpose overcame the statutory presumption of retaliation for complaints to the former landlord.

### G. Expansive Thinking and Creative Defenses

Tenants should assert equitable principles to defend eviction actions in a pandemic. The court can grant relief from forfeiture where the landlord is adequately protected. *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962); *Warren v. Driscoll*, 186 Minn. 1, 5, 242 N.W.2d 346, 347 (1932). See Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.28](#).

Decisions supporting the court's power to conduct its business might support slowing or stopping an eviction. See Residential Eviction Defense and Tenant Claims in Minnesota at [VIII.E.5.a](#). (expungement under common law inherent authority), [VI.D.7](#). (unauthorized practice of law and *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992)).

In *Henry v. \_\_\_\_\_*, No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) (Appendix PED-2), the court dismissed the first eviction action filed by the landlords for failure to provide the tenants a written notice of intent to file an eviction action. *Id.* at 1-2.

In the second eviction action, the landlords claimed that the tenants significantly damaged the property. The court noted that "Plaintiffs in the case make a number of additional claims, however, our findings must be limited to whether the Defendants caused significant damages to the property because the other claims are barred by the moratorium." *Id.* at 2.

The claims of significant damage stemmed from accusations that tenants did remodeling work to the property, including damage to a door, unsanitary conditions, and damage to the bathroom that the tenants intended to re-tile before the landlords told them to stop. The tenants claimed that the bathroom was moldy and dangerous, and the damage to the door was because someone tried to break into the house. The tenants' pictures showed little to no remaining damage and the property appears in at least as good a condition as it was originally, if not substantially better. *Id.* at 2-3.

The court concluded:

7. Across the state, country, and globe, courts are struggling to deal with unprecedented times. There is very little case law on how matters should proceed during a global pandemic. While there is no dispute [Executive Order 20-79](#) governs this action, the executive order lacks detail in many ways. "Significant damage" is not defined in the Executive Order. At the most basic level of context, the Court notes the Merriam-Webster definition of significant: a noticeably or measurably large amount. Additionally, the Executive Order does not speak to what a court should do if tenants had caused damage to the property but repaired it before the eviction action (the current action) was filed.

8. This Court must decide two narrow issues. First, did the tenants significantly damage the property? If they have not significantly damaged the property this matter must be dismissed because it is unable to proceed under [Executive Order 20-79](#). Second, if the tenants did cause significant damage to the property, but have since rectified the significant damage, can this action still proceed under [Executive Order 20-79](#).

9. The Court concludes that the tenants materially breached the lease when they began demolition and remodel work. During this time, there may have been instances where damage to the property was “significant” as an English dictionary defines it. The demolition of the bathroom floor and tub surround by Defendants without permission are particularly concerning. The demolition work was significant. However, since it appears from the evidence submitted at the hearing that there is no longer any significant damage, the Court will use other context from [Executive Order 20-79](#) to arrive at a legal conclusion on the second issue.

10. The first paragraph of [Executive Order 20-79](#) states that the purpose of [Executive Order 20-14](#), which declared a peacetime emergency, was “to protect the public health by ensuring that Minnesotans were stably housed during the COVID-19 pandemic”. The order goes on to say that moratorium on evictions “have been crucial to protect public health by promoting Minnesotans’ housing stability and preventing displacement during the COVID-19 pandemic”. The exceptions for residential evictions in [Executive Order 20-79](#) were created to “continue to strike a balance between the crucial importance of maintaining public health and stability for residential tenants, the economic impacts of the COVID-19 pandemic on tenants, and the interests of housing providers to maintain and protect their properties”.

11. A court cannot operate in a bubble. The COVID-19 pandemic is worsening throughout the country and in Minnesota. Infection rates are on the rise. The underlying purpose of this eviction moratorium is to protect the health and safety of not only tenants of rental units, but those elsewhere across the state. Tenants evicted from housing often move around, perhaps to family or friends’ houses, thus increasing travel and the potential for infection spread. The Court sympathizes with landlords and property managers across the state who do not have the options to regain possession they did before the pandemic and how this may be affecting their livelihood. The Court understands that the Plaintiffs in this case did not give Defendants permission to remodel any part of the property and in fact told them to stop. Plaintiffs will have remedies in conciliation court and housing court available to them once the eviction moratorium is lifted.

12. In this specific case, any significant damage to the property caused by the Defendants has now been rectified and balancing that fact against the public policy considerations in the Executive Order leads the Court to dismiss this action as unable to proceed due to [Executive Order 20-79](#).

*Id.* at 3-5. The court dismissed the action with prejudice. *Id.* at 6.

In [Kelley v. \\_\\_\\_\\_\\_](#), No. 11-CV-19-2181 (Minn. Dist. Ct. 9th Dist. Oct. 29, 2020) (Judge Strandlie) ([Appendix PED-16](#)), the court held for the landlord against the pro se tenant on the need for family member residency, finding:

Plaintiffs previously gave 30 notice to vacate however [sic] matter was stayed pursuant to Governor's Executive Order. Plaintiff testified under oath that a family member is prepared to move into the premises. Court Orders that this is a sufficient 30 day notice and orders eviction stayed until November 30, 2020. Plaintiff [sic] testified that said family member is prepared to move into the premises within 7 days of vacation by Def's.

*Id.* at 1. The court also found rent due for year of \$6,180.00 but did not rule on the claim of controlled substances on the premises. *Id.* at 1, 3. The court stayed the writ of recovery for a month. *Id.* at 1-2.

#### H. Writ of Mandamus to Compel the District Court to Issue a Summons

In [\*Olson Property Investments v. \\_\\_\\_\\_\\_\*, No. A20-1073 \(Minn. Ct. App. Sept. 1, 2020\) \(Appendix PED-17\)](#), the Minnesota Court of Appeals issued an unpublished order denying the landlord's petition for a writ of mandamus to compel the district court to issue a summons in an eviction action under the predecessors to [Emergency Executive Order 20-79](#). The court reviewed the facts alleged by the landlord.

According to the petition, petitioner gave notice of nonrenewal of the parties' residential lease on May 30, 2020 based on "illegal conduct by Tenants that seriously endangered the lives of another resident and the Landlord," but petitioner "chose not to bring the eviction until the lease expired by its natural expiration" on July 31, 2020. On August 3, 2020, petitioner filed an eviction complaint against respondents alleging that respondents (1) harassed and threatened another tenant, causing that tenant to move out, (2) harassed petitioner's agents, causing them to obtain ex parte harassment restraining orders (HROs) against respondents, and (3) made false allegations against petitioner's agents. The complaint states that expedited proceedings are not requested. See [Minn. Stat. § 504B.321, subd. 2\(a\) \(2018\)](#) (providing in relevant part that, in action based on tenant "causing a nuisance or other illegal behavior that seriously endangers the safety of other residents," the plaintiff "shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required").

*Id.* at 2-3. The court concluded that the landlord had not pled with enough specificity.

Even under a rule 12.02( e) standard, which petitioner argues should be applied, speculative allegations are insufficient. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 558 (Minn. 2003) (rejecting as insufficient allegations that social security numbers are still being shared or are generally accessible because allegations were "mere speculation."). And the district court need not accept as true, for purposes of a rule 12.02( e) motion, legal conclusions in the complaint. *Walsh v. US. Bank, NA.*, 851 N.W.2d 598, 603 (Minn. 2014) (noting that courts are "not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim"); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) ("A

plaintiff must provide more than labels and conclusions.").

We construe the exception in EO Nos. [20-14](#), [20-73](#) for "cases where the tenant seriously endangers the safety of other residents" or "others on the premises" to contemplate circumstances in which physical safety is at current risk, warranting expedited processing. Assuming without deciding that a rule 12.02(e) standard applies to the determination whether to allow an eviction action to proceed during the peacetime emergency under EO [20-14](#), [20-73](#), petitioner has not shown that the factual allegations against respondents in the amended complaint meet that threshold. We therefore conclude that petitioner has not shown that the district court had a duty clearly required by [Minn. Stat. § 504B.321, subd. 1](#), to issue the summons to respondents and schedule a hearing on the amended complaint.

*Id.* at 3-4.

#### I. Answer Forms

1. Poverty Law Answer Form No. A1v1 applies to eviction actions under [Emergency Executive Order 20-79](#).
2. Answer Form No. A1v2 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) through October 12, 2021.
3. Answer Form No. A1v3 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) after October 12, 2021 through June 1, 2022.

*See Pandemic Eviction and Other Housing Laws and Rules*

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

### CHAPTER IV: OTHER EVICTION DEFENSES AND ISSUES

#### A. Selected Defenses

While there are many defenses that tenants should consider in defending pandemic evictions, here are a few to highlight:

- Improper Service, [Minn. Stat. § 504B.331](#); Residential Eviction Defense and Tenant Claims in Minnesota at [VI.C.](#)
- Improper notice, *Oesterreicher v. Robertson*, 187 Minn. 497, 501, 245 N.W. 825, 825 (1932), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.1.](#)
- Waiver of notice, *Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1042, 1047 (1913); Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.4.](#)



- Retaliation, under statute [Minn. Stat. § 504B.285](#) and/or common law, *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.3](#) and [VI.F.3a](#).
- Waiver of breach, *Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.4](#).
- Domestic abuse, Minn. Stat. §§ [504B.285, Subd. 1 \(b\)](#); [504B.206, Subd. 1 \(a\)](#), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.38](#).
- Relief from forfeiture, *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962); *Warren v. Driscoll*, 186 Minn. 1, 5, 242 N.W.2d 346, 347 (1932), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.28](#).
- Reasonable accommodation of disability: 42U.S.C. § 3604(f)(3); 24 C.F.R. Part 100; *Douglas v. Kriegsfield Corp.*, 884 A.2d1109 (D.C. Ct. App. 2005); [Minn. Stat. § 363A.10](#); *Schuett v. Anderson*, 386N.W.2d 249, 253 (Minn. Ct. App. 1986), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.9](#).
- Manufactured (mobile) home park lot tenancies, [Minn. Stat. Ch. 327C.](#), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.7](#) and [VI.G.11](#).
- Public and subsidized housing, Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.10](#) and [VI.F.10](#).
- Extended stay of the writ of recovery, House File No. 4556, Art. 1, §16, *see discussion, supra*, at [I.E.](#)
- Expungement, under statute [Minn. Stat. § 484.014](#) or inherent authority [Minn. Stat. § 504B.345, Subd. 1\(c\)\(2\)](#), Residential Eviction Defense and Tenant Claims in Minnesota at [VIII.E.5](#).
- Attorney’s fees, [Minn. Stat. § 504B.172](#), Residential Eviction Defense and Tenant Claims in Minnesota VIII.E.4.

## B. Service Defenses

Service is governed by [Minn. Stat. § 504B.331](#); Residential Eviction Defense and Tenant Claims in Minnesota at [VI.C](#).

### 1. Expedited Service

Some landlords are filing expedited eviction actions that have a 24-hour window for complete service. *See* Residential Eviction Defense and Tenant Claims in Minnesota at [V.Q](#).

### 2. Decisions Holding for the Tenant

In [Kluge v. \\_\\_\\_\\_\\_](#), No. 31-CV-20-2602 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge [McBroom](#)) ([Appendix PED-15](#)), the court held for the defaulting pro se tenant against the landlord on issues of improper notice to intent to file the eviction action and improper expedited service, finding:



Defendant entered an oral lease to sublease a room in the home. Plaintiffs credibly testified that Defendant, who is subleasing the house, is endangering the safety of others. Defendant abuses heroin and brandished a handgun inside the house. These allegations may allow for an eviction action under [Emergency Executive Order 20-79](#) because Defendant's actions allegedly seriously endanger the safety of other tenants. However, Plaintiffs did not provide written notice of the intent to evict Defendant seven days prior to filing the action as required in [Order 20-79](#). Mr. Koehler referenced text messages from November 6, 10, and 12, 2020 in which he asked Defendant to vacate the premises, but there was no formal notice that he would be evicted if he refused. These text messages are not written notice of intent to evict Defendant and even if they satisfied that requirement, they were sent six days prior to filing, not seven. Plaintiffs did not comply with the notice requirements for an emergency eviction, and the Court cannot issue an eviction order.

Additionally, Plaintiff has not established proper service of the eviction action on Defendant. See [Minn. Stat. § 504B.321](#) ("The summons, in an expedited hearing, shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown."); [Minn. Stat. §504B.331 \(d\)\(1\)-\(d\)\(2\)](#); *Koski v. Johnson*, 837 N.W.2d 739, 744 (Minn. Ct. App. 2013).

*Id.* at 1-2. The court dismissed the eviction action without prejudice and ordered entry of judgment for the tenant. *Id.* at 2.

### 3. Decisions Holding for the Landlord

In [LKE Enterprises, LLC v. \\_\\_\\_\\_\\_](#), No. 31-CV-20-2600 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) (Appendix PED-14), the court held for the landlord against the defaulting pro se tenant. The court found the notice of the intent to file, served proper, and that the tenant seriously endangers the safety of other tenants.

#### b. Compliance with [Executive Order 20-79](#):

I. Plaintiff provided Notice of Intent to File Eviction to tenant on November 2 by posting on Tenant's door and sliding a copy under his door. Pictures of this notice were filed with the Court. Defendant sent an email to Plaintiff after that, and the content of the message demonstrated he received the notice.

ii. Defendant, by his assaultive actions, seriously endangers the safety of other tenants. He assaulted another tenant and another individual on October 23, 2020.

c. Service: Itasca County Sheriff's Department served tenant with notice of the eviction action and this hearing by posting the documents on his door on November 13, 2020 at 6:50 pm and November 14, 2020 at 11:48 a.m.

Plaintiff was at the property the afternoon of November 14, 2020 and no documents were on the door, suggesting that Defendant had seen and removed them. Plaintiff saw the Defendant in his apartment that afternoon as he had the door open.

Service for expedited procedure is required within 24 hours of the summons being issued unless there is good cause.

A summons was issued about 4:30 on November 13, 2020. Plaintiff gave documents to Sheriff immediately for service, and the Sheriff attempted personal service twice within 24 hours of the issuance of a summons. The summons was also mailed to Defendant. The plaintiff was not out of the area as is normally required for service by posting, but there was a good faith effort to serve Defendant, there is good reason to believe Defendant got actual notice of the proceeding, Defendant poses A risk to other tenants' safety, and there is good cause to excuse personal service within 24 hours of the issuance of the summons.

*Id.* at 1-2. Even though the court found serious endangerment, the court consider the pandemic and stayed the writ.

d. Though an expedited proceeding, the Court finds extraordinary and exigent circumstances that warrant staying the writ for a reasonable period of time. The COVID-19 pandemic and the extent of community spread means that Defendant should have additional time to learn of the Court's decision and additional time to find a safe place to live. The reasonable period of time is until Saturday, November 21, 2020 at 11:59 p.m. Plaintiff may request a Writ of Recovery on Monday, November 23, 2020 if Defendant has not vacated the premise.

*Id.* at 2.

## C. Precondition Defenses

### 1. In General

There is a detailed discussion of precondition defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.D.](#)

### 2. Improper Pleading

Specificity in pleading always has been important in summary eviction actions. *See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.D.6](#). It is even more critical in a pandemic with limited bases for eviction.

Specificity was at issue in [Olson Property Investments v. \\_\\_\\_\\_\\_, No. A20-1073 \(Minn. Ct. App. Sept. 1, 2020\) \(Appendix PED-17\)](#), the Minnesota Court of Appeals issued an

unpublished order denying the landlord's petition for a writ of mandamus to compel the district court to issue a summons in an eviction action under the predecessors to [Emergency Executive Order 20-79](#). The court reviewed the facts alleged by the landlord.

According to the petition, petitioner gave notice of nonrenewal of the parties' residential lease on May 30, 2020 based on "illegal conduct by Tenants that seriously endangered the lives of another resident and the Landlord," but petitioner "chose not to bring the eviction until the lease expired by its natural expiration" on July 31, 2020. On August 3, 2020, petitioner filed an eviction complaint against respondents alleging that respondents (1) harassed and threatened another tenant, causing that tenant to move out, (2) harassed petitioner's agents, causing them to obtain ex parte harassment restraining orders (HROs) against respondents, and (3) made false allegations against petitioner's agents. The complaint states that expedited proceedings are not requested. See [Minn. Stat. § 504B.321, subd. 2\(a\) \(2018\)](#) (providing in relevant part that, in action based on tenant "causing a nuisance or other illegal behavior that seriously endangers the safety of other residents," the plaintiff "shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required").

*Id.* at 2-3. The court concluded that the landlord had not pled with enough specificity.

Even under a rule 12.02(e) standard, which petitioner argues should be applied, speculative allegations are insufficient. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 558 (Minn. 2003) (rejecting as insufficient allegations that social security numbers are still being shared or are generally accessible because allegations were "mere speculation."). And the district court need not accept as true, for purposes of a rule 12.02(e) motion, legal conclusions in the complaint. *Walsh v. US Bank, NA.*, 851 N.W.2d 598, 603 (Minn. 2014) (noting that courts are "not bound by legal conclusions stated in a complaint when determining whether the complaint survives a motion to dismiss for failure to state a claim"); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) ("A plaintiff must provide more than labels and conclusions.").

We construe the exception in EO Nos. [20-14](#), [20-73](#) for "cases where the tenant seriously endangers the safety of other residents" or "others on the premises" to contemplate circumstances in which physical safety is at current risk, warranting expedited processing. Assuming without deciding that a rule 12.02(e) standard applies to the determination whether to allow an eviction action to proceed during the peacetime emergency under EO [20-14](#), [20-73](#), petitioner has not shown that the factual allegations against respondents in the amended complaint meet that threshold. We therefore conclude that petitioner has not shown that the district court had a duty clearly required by [Minn. Stat. § 504B.321, subd. 1](#), to issue the summons to respondents and schedule a hearing on the amended complaint.

*Id.* at 3-4.

Afterward, in [\*Olson Property Investments v. \\_\\_\\_\\_\\_\*, No. 19AV-CV-20-1479 \(Minn. Dist. Ct. 1<sup>st</sup> Dist. June 7, 2021\) \(Judge Wahi\) \(Appendix PED-57\)](#), the district court took no action in the case until March 21 when it notified the parties of a possible conditional dismissal. In response, the landlord filed an amended answer. The court concluded that the landlord failed to plead sufficient facts to show an exception under [Emergency Executive Order 20-79](#), noting (1) the landlord alleged the defendants harassed non-tenants, (2) the landlord alleged that one of the defendants violated a harassment restraining order filed by the non-tenants and was arrested and charged, (3) the landlord alleged that the defendants stomped on their floor and shut off water to harass the downstairs tenants, (4) the complaint did not reference the lease or a material violation of it to support a substantial endangerment claim against non-residents, and (5) the allegations did not rise to the level of placing other residents' current physical safety at risk. The court dismissed the action without prejudice.

In [\*Williams v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-20-1513 \(Minn. Dist. Ct. 4th Dist. Oct. 6, 2020\) \(Judge Miller\) \(Appendix PED-55\)](#), the landlords filed a second eviction action claiming nonpayment of rent and a violation of [Minn. Stat. § 504B.171](#) following dismissal of the first eviction action for lack of enough specificity in the complaint. In the second action, the defendant argued that [Emergency Executive Order 20-79](#) prohibited nonpayment of rent eviction actions and that the named plaintiffs were not owners of the property. The plaintiff amended their complaint to drop the nonpayment of rent claim and to add their trust that owned the property as another plaintiff. Following a trial on the [Minn. Stat. § 504B.171](#) claim, the court found that the plaintiffs did not offer sufficient evidence to connect the smell of marijuana to the defendant. The court dismissed the action with prejudice and ordered expungement and statutory costs.

See [Residential Eviction Defense and Tenant Claims in Minnesota at VI.D.6](#).

### 3. Improper Plaintiff

In [\*Williams v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-20-1513 \(Minn. Dist. Ct. 4th Dist. Oct. 6, 2020\) \(Judge Miller\) \(Appendix PED-55\)](#), the landlords filed a second eviction action claiming nonpayment of rent and a violation of [Minn. Stat. § 504B.171](#) following dismissal of the first eviction action for lack of enough specificity in the complaint. In the second action, the defendant argued that [Emergency Executive Order 20-79](#) prohibited nonpayment of rent eviction actions and that the named plaintiffs were not owners of the property. The plaintiff amended their complaint to drop the nonpayment of rent claim and to add their trust that owned the property as another plaintiff. Following a trial on the [Minn. Stat. § 504B.171](#) claim, the court found that the plaintiffs did not offer sufficient evidence to connect the smell of marijuana to the defendant. The court dismissed the action with prejudice and ordered expungement and statutory costs.

See [Residential Eviction Defense and Tenant Claims in Minnesota at VI.D.1](#).

## C1. Procedural Issues

In [Tich v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1432 (Minn. Dist. Ct. 4th Dist. July 22, 2020) (Referee Sedillos) (Appendix PED-38a), 48 minutes before the scheduled Zoom trial, the landlord's attorney filed a letter requesting a continuance because a critical witness was unavailable. At trial, the attorney said the continuance was necessary because he was not trial counsel, the only indispensable witness was available only by telephone, and they wanted to obtain a child protection report in a case claiming violations of [Minn. Stat. § 504B.171](#). The tenant objected because her attorney had rearranged his schedule for the trial and gathered witnesses. The court denied the motion at trial. The landlord's witness testified, and after close of the landlord's case in chief without the presence of the landlord, the court offered a recess so the landlord's attorney could try to contact the landlord. Following the recess, the landlord's attorney said he could not reach the landlord, but the case could proceed. Following the trial and while the matter was under advisement, the landlord filed a letter asking the court to reopen the record to allow the landlord to testify. The tenant opposed the request. The landlord claimed by affidavit that he could not connect with the remote hearing, but the court noted that he never called the clerk of court for assistance as he was notified in the scheduling order. The court denied the motion.

#### D. Notice Defenses

##### 1. In General

There is a detailed discussion of notice defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.](#) See discussion, *supra*, at [III.B.](#)

##### 2. Retaliation

In [Duke v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1742 (Minn. Dist. Ct. 4th Dist. Jan. 8, 2021) (Referee Sedillos) (Appendix PED-46), the court found that the new owner of the property purchased it so she and her daughter could reside on it, lease allowed the former owner to assign the lease, the new owner did not obtain a rental license but city staff testified she would not need one the impending owner-occupancy, and the landlord's purpose overcame the statutory presumption of retaliation for complaints to the former landlord.

For more information on retaliation under statute, see [Minn. Stat. § 504B.285](#), and under common law, see *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019). See generally Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.3](#) and [VI.F.3a.](#)

#### E. Breach Defenses

##### 1. In General

There is a detailed discussion of breach of lease defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.](#)

## 2. Equitable Considerations

Tenants should assert equitable principles to defend eviction actions in a pandemic. The court can grant relief from forfeiture where the landlord is adequately protected. *Naftalin v. John Wood Co.*, 263 Minn. 135, 147, 116 N.W.2d 91, 100 (1962); *Warren v. Driscoll*, 186 Minn. 1, 5, 242 N.W.2d 346, 347 (1932). See Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.28](#).

Decisions supporting the court's power to conduct its business might support slowing or stopping an eviction. See Residential Eviction Defense and Tenant Claims in Minnesota at [VIII.E.5.a](#) (expungement under common law inherent authority), [VI.D.7](#) (unauthorized practice of law and *Nicollet Restoration, Inc. v. Turnham*, 486 N.W.2d 753 (Minn. 1992)).

In [Henry v. \\_\\_\\_\\_\\_](#), No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) ([Appendix PED-2](#)), the court dismissed the first eviction action filed by the landlords for failure to provide the tenants a written notice of intent to file an eviction action. *Id.* at 1-2.

In the second eviction action, the landlords claimed that the tenants significantly damaged the property. The court noted that "Plaintiffs in the case make a number of additional claims, however, our findings must be limited to whether the Defendants caused significant damages to the property because the other claims are barred by the moratorium." *Id.* at 2.

The claims of significant damage stemmed from accusations that tenants did remodeling work to the property, including damage to a door, unsanitary conditions, and damage to the bathroom that the tenants intended to re-tile before the landlords told them to stop. The tenants claimed that the bathroom was moldy and dangerous, and the damage to the door was because someone tried to break into the house. The tenants' pictures showed little to no remaining damage and the property appears in at least as good a condition as it was originally, if not substantially better. *Id.* at 2-3.

The court concluded:

7. Across the state, country, and globe, courts are struggling to deal with unprecedented times. There is very little case law on how matters should proceed during a global pandemic. While there is no dispute [Executive Order 20-79](#) governs this action, the executive order lacks detail in many ways. "Significant damage" is not defined in the Executive Order. At the most basic level of context, the Court notes the Merriam-Webster definition of significant: a noticeably or measurably large amount. Additionally, the Executive Order does not speak to what a court should do if tenants had caused damage to the property, but repaired it before the eviction action (the current action) was filed.

8. This Court must decide two narrow issues. First, did the tenants significantly damage the property? If they have not significantly damaged the property this matter must be dismissed because it is unable to proceed under [Executive Order 20-79](#). Second, if the

tenants did cause significant damage to the property, but have since rectified the significant damage, can this action still proceed under [Executive Order 20-79](#).

9. The Court concludes that the tenants materially breached the lease when they began demolition and remodel work. During this time, there may have been instances where damage to the property was “significant” as an English dictionary defines it. The demolition of the bathroom floor and tub surround by Defendants without permission are particularly concerning. The demolition work was significant. However, since it appears from the evidence submitted at the hearing that there is no longer any significant damage, the Court will use other context from [Executive Order 20-79](#) to arrive at a legal conclusion on the second issue.

10. The first paragraph of [Executive Order 20-79](#) states that the purpose of [Executive Order 20-14](#), which declared a peacetime emergency, was “to protect the public health by ensuring that Minnesotans were stably housed during the COVID-19 pandemic”. The order goes on to say that moratorium on evictions “have been crucial to protect public health by promoting Minnesotans’ housing stability and preventing displacement during the COVID-19 pandemic”. The exceptions for residential evictions in [Executive Order 20-79](#) were created to “continue to strike a balance between the crucial importance of maintaining public health and stability for residential tenants, the economic impacts of the COVID-19 pandemic on tenants, and the interests of housing providers to maintain and protect their properties”.

11. A court cannot operate in a bubble. The COVID-19 pandemic is worsening throughout the country and in Minnesota. Infection rates are on the rise. The underlying purpose of this eviction moratorium is to protect the health and safety of not only tenants of rental units, but those elsewhere across the state. Tenants evicted from housing often move around, perhaps to family or friends’ houses, thus increasing travel and the potential for infection spread. The Court sympathizes with landlords and property managers across the state who do not have the options to regain possession they did before the pandemic and how this may be affecting their livelihood. The Court understands that the Plaintiffs in this case did not give Defendants permission to remodel any part of the property and in fact told them to stop. Plaintiffs will have remedies in conciliation court and housing court available to them once the eviction moratorium is lifted.

12. In this specific case, any significant damage to the property caused by the Defendants has now been rectified and balancing that fact against the public policy considerations in the Executive Order leads the Court to dismiss this action as unable to proceed due to [Executive Order 20-79](#).

*Id.* at 3-5. The court dismissed the action with prejudice. *Id.* at 6.



### 3. Cure

There is a detailed discussion of cure in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.20](#).

In [Henry v. \\_\\_\\_\\_\\_](#), No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) (Appendix PED-2), the court dismissed the first eviction action filed by the landlords for failure to provide the tenants a written notice of intent to file an eviction action. *Id.* at 1-2.

In the second eviction action, the landlords claimed that the tenants significantly damaged the property. The court noted that “Plaintiffs in the case make a number of additional claims, however, our findings must be limited to whether the Defendants caused significant damages to the property because the other claims are barred by the moratorium.” *Id.* at 2.

The claims of significant damage stemmed from accusations that tenants did remodeling work to the property, including damage to a door, unsanitary conditions, and damage to the bathroom that the tenants intended to re-tile before the landlords told them to stop. The tenants claimed that the bathroom was moldy and dangerous, and the damage to the door was because someone tried to break into the house. The tenants’ pictures showed little to no remaining damage and the property appears in at least as good a condition as it was originally, if not substantially better. *Id.* at 2-3.

The court concluded:

7. Across the state, country, and globe, courts are struggling to deal with unprecedented times. There is very little case law on how matters should proceed during a global pandemic. While there is no dispute [Executive Order 20-79](#) governs this action, the executive order lacks detail in many ways. “Significant damage” is not defined in the Executive Order. At the most basic level of context, the Court notes the Merriam-Webster definition of significant: a noticeably or measurably large amount. Additionally, the Executive Order does not speak to what a court should do if tenants had caused damage to the property, but repaired it before the eviction action (the current action) was filed.

8. This Court must decide two narrow issues. First, did the tenants significantly damage the property? If they have not significantly damaged the property this matter must be dismissed because it is unable to proceed under [Executive Order 20-79](#). Second, if the tenants did cause significant damage to the property, but have since rectified the significant damage, can this action still proceed under [Executive Order 20-79](#).

9. The Court concludes that the tenants materially breached the lease when they began demolition and remodel work. During this time, there may have been instances where damage to the property was “significant” as an English dictionary defines it. The demolition of the bathroom floor and tub surround by Defendants without permission are particularly concerning. The demolition work was significant. However, since it appears



from the evidence submitted at the hearing that there is no longer any significant damage, the Court will use other context from [Executive Order 20-79](#) to arrive at a legal conclusion on the second issue.

10. The first paragraph of [Executive Order 20-79](#) states that the purpose of [Executive Order 20-14](#), which declared a peacetime emergency, was “to protect the public health by ensuring that Minnesotans were stably housed during the COVID-19 pandemic”. The order goes on to say that moratorium on evictions “have been crucial to protect public health by promoting Minnesotans’ housing stability and preventing displacement during the COVID-19 pandemic”. The exceptions for residential evictions in [Executive Order 20-79](#) were created to “continue to strike a balance between the crucial importance of maintaining public health and stability for residential tenants, the economic impacts of the COVID-19 pandemic on tenants, and the interests of housing providers to maintain and protect their properties”.

11. A court cannot operate in a bubble. The COVID-19 pandemic is worsening throughout the country and in Minnesota. Infection rates are on the rise. The underlying purpose of this eviction moratorium is to protect the health and safety of not only tenants of rental units, but those elsewhere across the state. Tenants evicted from housing often move around, perhaps to family or friends’ houses, thus increasing travel and the potential for infection spread. The Court sympathizes with landlords and property managers across the state who do not have the options to regain possession they did before the pandemic and how this may be affecting their livelihood. The Court understands that the Plaintiffs in this case did not give Defendants permission to remodel any part of the property and in fact told them to stop. Plaintiffs will have remedies in conciliation court and housing court available to them once the eviction moratorium is lifted.

12. In this specific case, any significant damage to the property caused by the Defendants has now been rectified and balancing that fact against the public policy considerations in the Executive Order leads the Court to dismiss this action as unable to proceed due to [Executive Order 20-79](#).

*Id.* at 3-5. The court dismissed the action with prejudice. *Id.* at 6.

#### 4. Waiver of Breach

There is a detailed discussion of waiver of breach in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.4](#).

In [Dunnigan v. \\_\\_\\_\\_\\_](#), No. 19WS-CV-20-864 (Minn. Dist. Ct. 1st Dist. Dec. 4, 2020) (Judge Perzel) (Appendix PED-5a), the court concluded:

13. Waiver is an affirmative defense to an unlawful detainer action. *Priordale Mall Investors v. Farrington*, 411 N.W.2d 582, 583 (Minn. App. 1987). Generally, a landlord who accepts rent while knowing that breaches of the lease are occurring waives the right to rely on those breaches in an action for unlawful detainer. *Id.* at 584. A principal reason for the waiver rule is to provide a sense of security for the tenant that the lease remained in effect. *Id.*

14. Waiver is inapplicable here, as Landlord did not accept rent (nor did Defendant offer rent) from June 2020 forward, and Landlord was not on notice of the instant damage until June 2020.

*Id.* at 10. The court ordered entry of judgment and issuance of a writ to the landlord. *Id.*

## 5. Retaliation

In [\*Partners 388 LLC v. \\_\\_\\_\\_\\_\*, No. 75-CV-20-86 \(Minn. Dist. Ct. 8th Dist. May 8, 2020\) \(Judge Glasrud\) \(Appendix PED-25\)](#), the landlord filed the eviction action under [Emergency Executive Order 20-14](#), claiming drugs and unauthorized guests. The property manager smelled marijuana and the police found a small amount of marijuana. The landlord issued a termination notice a month later, and just after the tenant's sister obtained a harassment restraining order against the manager. Memorandum at 1.

The court concluded that the eviction appeared retaliatory and pretextual. The court noted that the landlord's delay demonstrated that the small amount of marijuana was no imminent or serious concern to the landlord and that Minnesota decriminalized use and possession of a small amount of marijuana. The tenant testified she smoked marijuana in her car, and there was no evidence she smoked on the grounds of the apartment complex. *Id.* at 2-3.

The Model Lease for Subsidized Programs provided that the landlord can terminate the lease for "drug related criminal activity engaged in on or near the premises" or if the landlord determines "that a household member is illegally using a drug." The court concluded that "off-premises marijuana smoking can or should void a residential subsidized HUD lease." *Id.* at 3.

The landlord also claimed that the tenant had an unauthorized resident in her apartment based on the father of one of the tenant's children had been seen regularly and continuously at the apartment after being trespassed by the landlord. The tenant explained that he was her invitee she worked. The court denied the claim, concluding that "One in possession of premises by permission of a tenant who is entitled to possession is not a trespasser but a licensee," citing *State v. Hoyt*, 304 N.W.2d 884, 890 (Minn. 1981) and *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617, (1984). *Id.* at 3-5.

The court then reviewed the case under [Emergency Executive Order 20-14](#). The court

concluded that there was no evidence or claim the safety of other residents was seriously endangered by the tenant's conduct. The court added that it was "absolutely confident that stem and two roaches are far from what Governor Walz had in mind, however, as he issued his order so as to allow people like the [the tenant's] 'household to remain sheltered during the peacetime emergency.'" *Id.* at 6-7.

The court noted it scheduled an expedited hearing based on the affidavit of the landlord's attorney stated that the tenant had engaged in drug related criminal activity, and had the court known "the activity was so minor and almost innocuous in nature that it was not even criminal, it would not have scheduled the expedited hearing." *Id.* at 7-9.

The court concluded:

Landlords may consider circumstances surrounding a lease violation. 24 C.F.R. § 966.4(1)(5)(vii)(B) (2019). This landlord really should have done so. The "violations" here are minor, at best. This was not an emergency, and did not qualify to as an exception to the COVID- 19 pandemic eviction moratorium. Attempting to evict defendant for these reasons, under these circumstances, and under the guise of it being a priority eviction is unconscionable.

*Id.* at 9.

The court ordered entry of judgment for the tenant along with costs and disbursements and ordered the landlord to pay a \$500.00 civil penalty into the court under [Minn. Stat. §504B.321, subd. 2 \(d\)](#). Order at 3.

In [Duke v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1742 \(Minn. Dist. Ct. 4th Dist. Jan. 8, 2021\) \(Referee Sedillos\) \(Appendix PED-46\)](#), the court found that the new owner of the property purchased it so she and her daughter could reside on it, lease allowed the former owner to assign the lease, the new owner did not obtain a rental license but city staff testified she would not need one the impending owner-occupancy, and the landlord's purpose overcame the statutory presumption of retaliation for complaints to the former landlord.

For more information on retaliation under statute, see [Minn. Stat. § 504B.285](#), and under common law, see *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019). See generally Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.3](#) and [VI.F.3a](#).

## 6. Public and Subsidized Housing

In [Chik-Fufa v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1632 \(Minn. Dist. Ct. 4th Dist. Oct. 30, 2020\) \(Referee Sedillos\) \(Appendix PED-45\)](#), the landlord filed an eviction action in September 2020, claiming nonpayment of rent, breach of lease, holding over after termination of the tenancy, and unlawful activities. The court dismissed all claims except the claims of possession of drugs and

stolen property. The court then dismissed the action without prejudice where the landlord failed to serve the complaint on the Section 8 Voucher Program of the public housing authority and ordered expungement.

#### F. Remedies, Requests for Relief, and Post-Trial Issues

There is a detailed discussion of remedies and relief in Residential Eviction Defense and Tenant Claims in Minnesota at [VII](#).

##### 1. Dismissal

Most courts holding for tenants have dismissed the eviction actions with prejudice.

- [Aysta Properties, Inc. v. \\_\\_\\_\\_\\_](#), No. 69VI-CV-20-421 (Minn. Dist. Ct. 6th Dist. Dec. 14, 2020) (Judge Peterson) (Appendix PED-9);
- [BBS LLC v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1412 (Minn. Dist. Ct. 4th Dist. Dec. 2, 2020) (Referee Sedillos) (Appendix PED-6);
- [Benolken v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-20-624 (Minn. Dist. Ct. 2nd Dist. Nov. 30, 2020) (Judge Nelson) (Appendix PED-3);
- [Aysta Properties, Inc. v. \\_\\_\\_\\_\\_](#), No. 69VI-CV-20-419 (Minn. Dist. Ct. 6th Dist. Nov. 13, 2020) (Judge Friday) (Appendix PED-8);
- [Henry v. \\_\\_\\_\\_\\_](#), No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) (Appendix PED-2);
- [Newcastle Lake LLC v. Carmichael](#), No. 2020-005609-CC-20 (Fla. Cir. Ct. 11th Cir. Miami-Dade County Oct. 21, 2020) (Judge Murray) (Appendix PED-4);
- [Yimer v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1408 (Minn. Dist. Ct. 4th Dist. Sep. 10, 2020) (Referee Sedillos) (Appendix PED-1);
- [IH2 Property Illinois, L.P. v. \\_\\_\\_\\_\\_](#), No. No. 27-CV-HC-20-1438 (Minn. Dist. Ct. 4th Dist. July 28, 2020) (Referee Sedillos) (Appendix PED-26);
- [Sela Group, LLC v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1360 (Minn. Dist. Ct. 4th Dist. July 14, 2020) (Referee Sedillos) (Appendix PED-10).

Tenant victories based on failure to give proper notice often involve dismissal the action without prejudice. In [Kluge v. \\_\\_\\_\\_\\_](#), No. 31-CV-20-2602 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) (Appendix PED-15), the court held for the defaulting pro se tenant against the landlord on issues of improper notice to intent to file the eviction action and improper expedited service. *Id.* at 1-2. The court dismissed the eviction action without prejudice and ordered entry of judgment for the tenant. *Id.* at 2. Other decisions include:

- [Park Real Estate Services v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC- 21-15 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2021) (Appendix PED-29) (the court dismissed the action without prejudice for failing to the provide the 7-day notice);
- [Grover v. \\_\\_\\_\\_\\_](#), No. 19WS-CV-20-998 (Minn. Dist. Ct. 1st Dist. Dec. 22, 2020) (Judge

[Perzel](#)) ([Appendix PED-32](#)) (the court dismissed the action without prejudice and granted expungement for failing to provide the 7-day notice);

- [Bard v. \\_\\_\\_\\_\\_](#), No. No. 02-CV-20-3913 (Minn. Dist. Ct. 10th Dist. Nov. 4, 2020) ([Appendix PED-27](#)) (the court dismissed the action without prejudice where the landlord failed to provide the 7-day notice of intent to file the eviction action under [Emergency Executive Order 20-79](#)).

1a. Entry of Judgment

a. For Tenants

Courts should order entry of judgment for tenants when they prevail on the merits. Orders for entry of judgment for tenants include:

- [Aysta Properties, Inc. v. \\_\\_\\_\\_\\_](#), No. 69VI-CV-20-421 (Minn. Dist. Ct. 6th Dist. Dec. 14, 2020) (Judge Peterson) ([Appendix PED-9](#));
- [BBS LLC v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1412 (Minn. Dist. Ct. 4th Dist. Dec. 2, 2020) (Referee Sedillos) ([Appendix PED-6](#));
- [Benolken v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-20-624 (Minn. Dist. Ct. 2nd Dist. Nov. 30, 2020) (Judge Nelson) ([Appendix PED-3](#));
- [Kluge v. \\_\\_\\_\\_\\_](#), No. 31-CV-20-2602 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) ([Appendix PED-15](#));
- [Partners 388 LLC v. \\_\\_\\_\\_\\_](#), No. 75-CV-20-86 (Minn. Dist. Ct. 8th Dist. May 8, 2020) (Judge Glasrud) ([Appendix PED-25](#));

b. For Landlords

Courts ordered entry of judgment for landlords in:

- [Duke v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1742 (Minn. Dist. Ct. 4th Dist. Jan. 8, 2021) (Referee Sedillos) ([Appendix PED-30](#));
- [Vailwood, LLC v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-20-920 (Minn. Dist. Ct. 2nd Dist. Jan. 6, 2021) (Judge Nelson) ([Appendix PED-24](#));
- [Munger Terrace, LLLP v. \\_\\_\\_\\_\\_](#), No. 69DU-CV-20-1348 (Minn. Dist. Ct. 6th Dist. Sep. 29, 2020) (Judge Neo) ([Appendix PED-12](#));
- [Dunnigan v. \\_\\_\\_\\_\\_](#), No. 19WS-CV-20-864 (Minn. Dist. Ct. 1st Dist. Sep. 22, 2020) (Judge Lutz) ([Appendix PED-5](#));
- [Lofgren v. \\_\\_\\_\\_\\_](#), No. 04-CV-20-1069 (Minn. Dist. Ct. 9th Dist. April 21, 2020) (Judge Benschhoof) ([Appendix PED-33](#));

1b. Expedited Evictions

In [Partners 388 LLC v. \\_\\_\\_\\_\\_](#), No. 75-CV-20-86 (Minn. Dist. Ct. 8th Dist. May 8, 2020)

[\(Judge Glasrud\) \(Appendix PED-25\)](#), the landlord filed the eviction action under [Emergency Executive Order 20-14](#), claiming drugs and unauthorized guests. The property manager smelled marijuana and the police found a small amount of marijuana. The landlord issued a termination notice a month later, and just after the tenant's sister obtained a harassment restraining order against the manager. Memorandum at 1.

The court concluded that the eviction appeared retaliatory and pretextual. The court noted that the landlord's delay demonstrated that the small amount of marijuana was no imminent or serious concern to the landlord and that Minnesota decriminalized use and possession of a small amount of marijuana. The tenant testified she smoked marijuana in her car, and there was no evidence she smoked on the grounds of the apartment complex. *Id.* at 2-3.

The Model Lease for Subsidized Programs provided that the landlord can terminate the lease for "drug related criminal activity engaged in on or near the premises" or if the landlord determines "that a household member is illegally using a drug." The court concluded that "off-premises marijuana smoking can or should void a residential subsidized HUD lease." *Id.* at 3.

The landlord also claimed that the tenant had an unauthorized resident in her apartment based on the father of one of the tenant's children had been seen regularly and continuously at the apartment after being trespassed by the landlord. The tenant explained that he was her invitee she worked. The court denied the claim, concluding that "One in possession of premises by permission of a tenant who is entitled to possession is not a trespasser but a licensee," citing *State v. Hoyt*, 304 N.W.2d 884, 890 (Minn. 1981) and *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617, (1984). *Id.* at 3-5.

The court then reviewed the case under [Emergency Executive Order 20-14](#). The court concluded that there was no evidence or claim the safety of other residents was seriously endangered by the tenant's conduct. The court added that it was "absolutely confident that stem and two roaches are far from what Governor Walz had in mind, however, as he issued his order so as to allow people like the [the tenant's] 'household to remain sheltered during the peacetime emergency.'" *Id.* at 6-7.

The court noted it scheduled an expedited hearing based on the affidavit of the landlord's attorney stated that the tenant had engaged in drug related criminal activity, and had the court known "the activity was so minor and almost innocuous in nature that it was not even criminal, it would not have scheduled the expedited hearing." *Id.* at 7-9.

The court concluded:

Landlords may consider circumstances surrounding a lease violation. 24 C.F.R. § 966.4(1)(5)(vii)(B) (2019). This landlord really should have done so. The "violations" here are minor, at best. This was not an emergency, and did not qualify to as an exception

to the COVID- 19 pandemic eviction moratorium. Attempting to evict defendant for these reasons, under these circumstances, and under the guise of it being a priority eviction is unconscionable.

*Id.* at 9.

The court ordered entry of judgment for the tenant along with costs and disbursements and ordered the landlord to pay a \$500.00 civil penalty into the court under [Minn. Stat. §504B.321, subd. 2 \(d\)](#). Order at 3.

2. Stay of the Eviction Action

In [Raintree Associates LLP v. \\_\\_\\_\\_\\_](#), No. 69VI-CV-20-413 (Minn. Dist. Ct. 6th Dist. Dec. 1, 2020) (Judge Anderson) (Appendix PED-7), the court suspended the eviction action until such time as the Governor's Executive Order is modified or expires. *Id.* at 2-3.

3. Writ of Recovery

a. Execution of the Writ of Recovery

In [Minneapolis Public Housing Authority v. \\_\\_\\_\\_\\_](#), No. 27-CV-HC-20-1523 (Minn. Dist. Ct. 4th Dist. Oct. 8, 2020) (Referee Houghtaling) (Appendix PED-42), the court ordered an immediate writ of recovery for the landlord that prevailed on an exception authorized in [Emergency Executive Order 20-79](#) but the sheriff would not execute the writ of recovery since it was not designated as a priority writ of recovery. The court ordered the sheriff to execute the writ since the eviction action was authorized under [Emergency Executive Order 20-79](#).

b. Stay of Writ of Recovery Longer than 7 Days

House File No. 4556, Art. 1, §16 supported an extended stay of the writ of recovery, as it suspends statutory deadlines for district and appellate court proceedings. *See* discussion, *supra*, at [I.E.](#)

In [Kelley v. \\_\\_\\_\\_\\_](#), No. 11-CV-19-2181 (Minn. Dist. Ct. 9th Dist. Oct. 29, 2020) (Judge Strandlie) (Appendix PED-16), the court held for the landlord against the pro se tenant on the need for family member residency, finding:

Plaintiffs previously gave 30 notice to vacate however [sic] matter was stayed pursuant to Governor's Executive Order. Plaintiff testified under oath that a family member is prepared to move into the premises. Court Orders that this is a sufficient 30 day notice and orders eviction stayed until November 30, 2020. Plaintiff [sic] testified that said family member is prepared to move into the premises within 7 days of vacation by Def's.



*Id.* at 1. The court also found rent due for year of \$6,180.00 but did not rule on the claim of controlled substances on the premises. *Id.* at 1, 3. The court stayed the writ of recovery for a month. *Id.* at 1-2.

b. Pandemic Considerations

In [\*LKE Enterprises, LLC v. \\_\\_\\_\\_\\_\*, No. 31-CV-20-2600 \(Minn. Dist. Ct. 9th Dist. Nov. 19, 2020\) \(Judge McBroom\) \(Appendix PED-14\)](#), the court held for the landlord against the defaulting pro se tenant. The found the notice of the intent to file, ed service proper, and that the tenant seriously endangers the safety of other tenants.

b. Compliance with [Executive Order 20-79](#):

i. Plaintiff provided Notice of Intent to File Eviction to tenant on November 2 by posting on Tenant's door and sliding a copy under his door. Pictures of this notice were filed with the Court. Defendant sent an email to Plaintiff after that, and the content of the message demonstrated he received the notice.

ii. Defendant, by his assaultive actions, seriously endangers the safety of other tenants. He assaulted another tenant and another individual on October 23, 2020.

c. Service: Itasca County Sheriff's Department served tenant with notice of the eviction action and this hearing by posting the documents on his door on November 13, 2020 at 6:50 pm and November 14, 2020 at 11:48 a.m.

Plaintiff was at the property the afternoon of November 14, 2020 and no documents were on the door, suggesting that Defendant had seen and removed them. Plaintiff saw the Defendant in his apartment that afternoon as he had the door open.

Service for expedited procedure is required within 24 hours of the summons being issued unless there is good cause.

A summons was issued about 4:30 on November 13, 2020. Plaintiff gave documents to Sheriff immediately for service, and the Sheriff attempted personal service twice within 24 hours of the issuance of a summons. The summons was also mailed to Defendant. The plaintiff was not out of the area as is normally required for service by posting, but there was a good faith effort to serve Defendant, there is good reason to believe Defendant got actual notice of the proceeding, Defendant poses A risk to other tenants' safety, and there is good cause to excuse personal service within 24 hours of the issuance of the summons.

*Id.* at 1-2. Even though the court found serious endangerment, the court consider the pandemic and stayed the writ.



d. Though an expedited proceeding, the Court finds extraordinary and exigent circumstances that warrant staying the writ for a reasonable period of time. The COVID-19 pandemic and the extent of community spread means that Defendant should have additional time to learn of the Court's decision and additional time to find a safe place to live. The reasonable period of time is until Saturday, November 21, 2020 at 11:59 p.m. Plaintiff may request a Writ of Recovery on Monday, November 23, 2020 if Defendant has not vacated the premise.

*Id.* at 2.

#### 4. Expungement

There is a detailed discussion of expungement in Residential Eviction Defense and Tenant Claims in Minnesota at [VIII.E.5](#).

Some courts that have dismissed eviction actions also have expunged them.

- [Grover v. \\_\\_\\_\\_\\_, No. 19WS-CV-20-998 \(Minn. Dist. Ct. 1st Dist. Dec. 22, 2020\) \(Judge Perzel\) \(Appendix PED-32\)](#);
- [BBS LLC v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1412 \(Minn. Dist. Ct. 4th Dist. Dec. 2, 2020\) \(Referee Sedillos\) \(Appendix PED-6\)](#);
- [Yimer v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1408 \(Minn. Dist. Ct. 4th Dist. Sep. 10, 2020\) \(Referee Sedillos\) \(Appendix PED-1\)](#);
- [IH2 Property Illinois, L.P. v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1438 \(Minn. Dist. Ct. 4th Dist. July 28, 2020\) \(Referee Sedillos\) \(Appendix PED-26\)](#);
- [Sela Group, LLC v. \\_\\_\\_\\_\\_, No. 27-CV-HC-20-1360 \(Minn. Dist. Ct. 4th Dist. July 14, 2020\) \(Referee Sedillos\) \(Appendix PED-10\)](#).

In [Aysta Properties, Inc. v. \\_\\_\\_\\_\\_, No. 69VI-CV-20-419 \(Minn. Dist. Ct. 6th Dist. Nov. 13, 2020\) \(Judge Friday\) \(Appendix PED-8\)](#), The court dismissed the eviction action with prejudice and reserved the issue of expungement for determination upon further motion, evidence, and argument. *Id.* at 1-2.

#### 5. Settlements and Enforcement

In [\\_\\_\\_\\_\\_ v. Distinguished Prop., LLC, No. 27-CV-HC-21-118 \(Minn. Dist. Ct. 4th Dist. June 9, 2021\) \(Referee Houghtaling\) \(Appendix PED-57a\)](#), the parties settled a tenant remedies action in which the tenants would vacate the property and the landlord would pay \$1,000 to the tenants and an additional \$3,000 after the tenants vacated the property, removed personal property, and returned keys. The landlord refused to make the second payment claiming that the tenants left personal property and did not return keys. The court found that the tenants substantially complied with the agreement by vacating and leaving keys, and that leaving a few personal items was not a material breach. The court ordered the landlord to make the payment

within 10 days.

5. Other Post-Trial Issues

a. In General

There is a detailed discussion of post-trial issues in Residential Eviction Defense and Tenant Claims in Minnesota at [VIII](#).

b. Motion to Reopen

In *Tich v. \_\_\_\_\_*, No. 27-CV-HC-20-1432 (Minn. Dist. Ct. 4th Dist. July 22, 2020) ([Referee Sedillos](#)) ([Appendix PED-38a](#)), 48 minutes before the scheduled Zoom trial, the landlord's attorney filed a letter requesting a continuance because a critical witness was unavailable. At trial, the attorney said the continuance was necessary because he was not trial counsel, the only indispensable witness was available only by telephone, and they wanted to obtain a child protection report in a case claiming violations of [Minn. Stat. § 504B.171](#). The tenant objected because her attorney had rearranged his schedule for the trial and gathered witnesses. The court denied the motion at trial. The landlord's witness testified, and after close of the landlord's case in chief without the presence of the landlord, the court offered a recess so the landlord's attorney could try to contact the landlord. Following the recess, the landlord's attorney said he could not reach the landlord, but the case could proceed. Following the trial and while the matter was under advisement, the landlord filed a letter asking the court to reopen the record to allow the landlord to testify. The tenant opposed the request. The landlord claimed by affidavit that he could not connect with the remote hearing, but the court noted that he never called the clerk of court for assistance as he was notified in the scheduling order. The court denied the motion. Following the trial and while the matter was under advisement, the landlord filed a letter asking the court to reopen the record to allow the landlord to testify. The tenant opposed the request. The landlord claimed by affidavit that he could not connect with the remote hearing, but the court noted that he never called the clerk of court for assistance as he was notified in the scheduling order. The court denied the motion.

G. Answer Forms

1. Poverty Law Answer Form No. A1v1 applies to eviction actions under [Emergency Executive Order 20-79](#).

2. Answer Form No. A1v2 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) through October 12, 2021.

3. Answer Form No. A1v3 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) after October 12, 2021 through June 1, 2022.

*See Pandemic Eviction and Other Housing Laws and Rules*

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

#### H. Judge Review of Referee Decisions

There is a detailed discussion of judge review of referee decision in Residential Eviction Defense and Tenant Claims in Minnesota at [IX](#).

#### I. Appeal and Writ of Prohibition

There is a detailed discussion in Residential Eviction Defense and Tenant Claims in Minnesota at [X](#) and [XI](#).

### CHAPTER V: ATTORNEY GENERAL ENFORCEMENT OF EXECUTIVE ORDER 20-79

The Attorney General is charged with enforcing [Emergency Executive Order 20-79](#). *See* discussion, *supra*, at [I.A.2.b.\(6\)](#). The Attorney General has charged several landlords.

[https://www.ag.state.mn.us/Office/Communications/2020/04/03\\_Mostad.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/03_Mostad.asp)

[https://www.ag.state.mn.us/Office/Communications/2020/04/07\\_Mostad.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/07_Mostad.asp)

[https://www.ag.state.mn.us/Office/Communications/2020/04/10\\_DivineEstates.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/10_DivineEstates.asp)

[https://www.ag.state.mn.us/Office/Communications/2020/04/17\\_LaPlant.asp](https://www.ag.state.mn.us/Office/Communications/2020/04/17_LaPlant.asp)

[https://www.ag.state.mn.us/Office/Communications/2020/07/29\\_Landlords.asp](https://www.ag.state.mn.us/Office/Communications/2020/07/29_Landlords.asp)

[https://www.ag.state.mn.us/Office/Communications/2021/02/17\\_Wentzlaff.asp](https://www.ag.state.mn.us/Office/Communications/2021/02/17_Wentzlaff.asp)

In [State v. Mostad, No. 58-CV-20-175 \(Minn. Dist. Ct. 10th Dist. April 6, 2020\) \(Appendix PED-20\)](#), the court enjoined the landlord interrupting utility service to the tenant, in violation of [Emergency Executive Order 20-14](#), concluding that the Attorney General had the power to enforce it. Subsequently, in [State v. Mostad, No. 58-CV-20-175 \(Minn. Dist. Ct. 10th Dist. Mar. 15, 2021\) \(Appendix PED-20a\)](#), the court found that the landlord disconnected electricity on April 2, 2020, the Attorney General contacted the landlord on April 3 and filed this action that day under [Minn. Stat. § 504B.381](#) (emergency tenant remedies action), and the landlord restored service on April 4. Amended Findings of Fact, Conclusions of Law, and Order at 2-3. The court concluded that the Attorney General had standing to bring the action, the landlord violated [Emergency Executive Order 20-14](#), the Attorney General did not have standing to seek damages under [Minn. Stat. § 504B.221](#) for interruption of utilities, the Attorney General did have standing to enforce health, housing and building maintenance codes under [Minn. Stat. § 504B.381](#) (emergency tenant remedies action) but the Attorney General did not satisfy the statutory pre-filing notice, Attorney General enforcement of [Emergency Executive Order 20-14](#) was not an unlawful taking under the United States and Minnesota Constitutions, and a \$25,000 penalty was not warranted.

### CHAPTER VI: PLANNING FOR EVICTIONS AFTER EXPIRATION OR RESCISSION EXECUTIVE ORDER 20-79

A. Eviction Estimates and Policy Advocacy

1. Emergency Executive Order 20-79 is Highly Rated

Some states have suspended some evictions. More states let their suspensions expire, or never had one. [E. Benfer, COVID-19 Eviction Moratoria: Federal \(CDC\), State, Commonwealth, and Territory \(viewed Dec. 9, 2020\)](#). [Emergency Executive Order 20-79](#) is rated highly for protecting tenants. [COVID-19 Housing Policy Scorecard \(Eviction Lab - viewed Dec. 9, 2020\)](#).

2. The Eviction Tsunami

a. Past Eviction Numbers

16,000 eviction court actions were filed in Minnesota in 2017, or 1,333 per month. [S. Spaid, Evictions in Greater Minnesota Report \(HOME Line June 1, 2018\)](#). The number of evictions varied among districts and counties.

- Fourth Judicial District - Hennepin County 6,000 (500 per month) - [A. Holdener, et. al, Eviction and Homelessness in Hennepin County, at 2 \(Hubert H. Humphrey School of Public Affairs May 19, 2018\)](#).
- Minneapolis: 3,000 (250 per month) - [Evictions in Minneapolis \(Minneapolis Innovation Team May 2017\)](#).
- Third Judicial District - 1050 (88 per month), with the highest numbers in Olmsted County (377, or 31 per month), Winona County (123, or 10 per month), Mower County (121, or 10 per month), and Steele County (108, or 9 per month) - Email from Angie Hutchins, Third Judicial District Deputy District Administrator, to Lawrence McDonough (Jan. 14, 2121)
- Seventh Judicial District - 1292 (108 per month), with the highest numbers in Stearns County (504, or 42 per month), Clay County (262, or 22 per month), Benton County (136, or 11 per month), and Otter Tail County (115, or 10 per month)
- Eighth Judicial District - 262 (22 per month), with the highest numbers in Kandiyohi County (93, or 8 per month), Meeker County (38, or 3 per month), and Chippewa County (33, or 3 per month) - *Filings By WCL Type January 2019 Thru December 2019* (MNJAD Mar. 25, 2021)
- Ninth Judicial District - 574 (48 per month), with the highest numbers in Crow Wing County (139, or 12 per month), Beltrami County (94, or 8 per month), Itasca County (91, or 8 per month), and Polk County (70, or 6 per month) - *Pandemic Eviction Filings >*

March 24, 2020 through December 18, 2020 (Minn. Dist. Ct. 9th Dist. Dec. 18, 2020)

- Tenth Judicial District - Anoka County: 1080 (90 per month) - Email from John Murphy, Anoka County Law Library Director, to Lawrence McDonough (Oct. 26, 2020)

One year later, around that many are on hold. Some tenants have moved, some tenants have negotiated with their landlords, some tenants have received assistance, and some landlords were able to file eviction actions within the exceptions of [Emergency Executive Order 20-79](#), perhaps lowering the number of blocked evictions, *if the economy is ignored. But, what about economy?*

b. Rent Burdens

Tenants already were rent burdened. [Cost Burdens Rise for Middle-Income Households in Most Metros \(Harvard Joint Center for Housing Studies January 2020\)](#) (viewed Dec. 9, 2020); [M. Moylan, Report: More Middle-income Renters Burdened by Housing Costs \(Minnesota Public Radio Jan. 31, 2020\)](#) (viewed Dec. 9, 2020); [Housing Burden: All Residents Should Have Access to Quality, Affordable Homes \(National Equity Atlas\)](#) (viewed Dec. 9, 2020); [American Families Face a Growing Rent Burden - High Housing Costs Threaten Financial Security and Put Homeownership out of Reach for Many \(The Pew Charitable Trusts April 19, 2018\)](#) (viewed Dec. 9, 2020)

The percent of occupied units paying rent that are spending more than 30% of income on rent costs in selected counties in Minnesota:

- Hennepin County: 47.1%
- Ramsey County: 49.4%
- Anoka County: 46.5%
- Stevens County: 54.1%
- Itasca County: 54.1%
- Waseca County: 54.2%
- Wilkin County: 55.0%
- Clay County: 55.7%

[Percent of Occupied Units Paying Rent That Are Spending More than 30% of Income on Rent Costs \(Tableau Public Mar. 24, 2020\)](#) (viewed Dec. 9, 2020)

c. Unemployed Tenants

Unemployment is high. The Minnesota unemployment rate in January 2021 was 4.5%, down from 7.6% in July 2020 and 11.3% in May 2020, but still up from 3.5% in March 2020. [State and National Employment and Unemployment Current Data \(Minnesota Department of Employment and Economic Development - viewed Mar. 25, 2021\)](#); [Minnesota Unemployment](#)

[\(Department of Numbers - viewed Mar. 25, 2021\).](#)

Minnesota cumulative unemployment insurance applicants by county from March 16 to February 23, 2021 as a share of 2019 annual labor force:

- Fourth Judicial District: Hennepin County: 288,699 (**40.1%**) of 711,530
- Third Judicial District: Olmsted County - 37,415 (**41.3%**) of 89,730, Winona County - 9,719 (**33.5%**) of 29,053, and Steele County - 7,983 (**39.0%**) of 20,451
- Seventh Judicial District: Stearns County - 35,059 of (**38.1%**) 92,043, Clay County - 5,486 of (**15.1%**) 36,336, Benton County - 9,860 of (**44.4%**) 22,224, and Otter Tail County - 9,438 of (**29.4%**) 32,110
- Eighth Judicial District: Kandiyohi County - 7,018 (**27.6%**) of 25,415, Meeker County - 4,329 (**32.5%**) of 13,326, and Chippewa County - 2,371 (**33.5%**) of 7,070
- Ninth Judicial District: Beltrami County - 8,639 (**34.9%**) of 24,779, Crow Wing County - 14,336 (**43.6%**) of 32,904, and Roseau County - 5,837 (**73.2%**) of 7,972
- Tenth Judicial District: Anoka County - 85,445 (**43.0%**) of 198,938

[Unemployment Insurance Statistics \(Minnesota Department of Employment and Economic Development - viewed Mar. 25, 2021\); Local Area Unemployment Statistics \(LAUS\) \(Minnesota Department of Employment and Economic Development - viewed Mar. 25, 2021\) \(selected Data Tool, Minnesota Counties, County, Historical Data, Annual and Labor Force\)](#)

d. Census Data: Tenants, Unemployment, and Rents

The United States Census Bureau produces data on the social and economic effects of coronavirus on American households. The Household Pulse Survey collects data to measure household experiences during the coronavirus pandemic. [Household Pulse Survey Data, Phase 3 \(United States Department of Commerce - viewed Mar. 11, 2021\); Household Pulse Survey Data Tables, Phase 3 \(United States Department of Commerce - viewed Mar. 11, 2021\).](#)

As of March 10, 2021, out of 648,384 adult tenants estimated by the Census, it estimated:

- **116,756 (18.0%)** were not currently caught up on rent payments. [Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota \(United States Department of Commerce Mar. 10, 2021\).](#)
- **212,894 (32.8%)** were unemployed. *Id.*
- **368,764 (56.9%)** experienced the loss of employment income of a household member. *Id.*
- **105,625 (16.3%)** had no or slight confidence in the ability to make the next month's payment, [Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics: Minnesota \(United States Department of Commerce Mar. 10, 2021\).](#)
- Of the 116,756 tenants estimated to not be currently caught up on rent payments, **65,339 (56.0%)** very likely or somewhat likely to leave home due to eviction in next two months.

[Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics: Minnesota \(United States Department of Commerce Mar. 10, 2121\).](#)

Compare this with **16,000** eviction court actions statewide in 2017. The Census data supports estimating the number of evictions on hold would well exceed the annual number without an eviction transition plan. These evictions would overwhelm the legal services housing attorneys and the courts.

d1. People of Color

People of color are at great risk of eviction. In February 2021, the 12-month moving average unemployment rate for Black Minnesota was 9.2%, up from 4.5% in February 2020. [Alternative Measures of Unemployment, Table 5 \(Minnesota Department of Employment and Economic Development - viewed Mar. 31, 2021\).](#)

As of March 10, 2021, out of 81,851 Black adult tenants estimated by the Census, it estimated:

- **39,383 (48.1%)** were not currently caught up on rent payments. [Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota \(United States Department of Commerce Mar. 10, 2121\).](#)
- **38,348 (46.9%)** had no or slight confidence in the ability to make the next month's payment. [Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics: Minnesota \(United States Department of Commerce Mar. 10, 2121\).](#)
- Of the 39,383 Black tenants estimated to not be currently caught up on rent payments, **10,406 (26.4%)** very likely or somewhat likely to leave home due to eviction in next two months. [Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics: Minnesota \(United States Department of Commerce Mar. 10, 2121\).](#)

e. Homelessness in Minnesota

Homelessness already had reached a record high in Minnesota before the pandemic. [K. Smith & R. Olson, Hennepin County: Weekly Cost of Housing Homeless During Pandemic Could Reach \\$1 Million \(Star Tribune Mar. 26, 2020\); K. Smith, Minnesota's Homeless Population Reaches Record High Number \(Star Tribune Mar. 21, 2019\).](#)

During the pandemic, the county costs of housing the homeless has skyrocketed. [D. Chanen, Hennepin County Poised to Spend \\$22 Million on 6 New Sites to Help the Homeless \(Star Tribune Mar. 26, 2020\).](#)



f. Represented Tenants Fare Better in Eviction Action

Attorney representation of tenants increases favorable outcomes for tenants, reduces the risk of homelessness, and reduces government emergency financial assistance and shelter costs. [Legal Representation in Evictions - Comparative Study \(Mid-Minnesota Legal Aid and Volunteer Lawyers Network Nov. 2018\).](#)

g. Minnesota Eviction Estimates

Stout estimates for Minnesota, surveyed November 11 to 23, 2020:

- 92,000-199,000 at risk of eviction
- \$142,000,000-\$267,000,000 current rent shortfall
- 32,100-69,800 potential evictions in January 2021 (if evictions were unlimited)
- \$173,000,000-\$330,000,000 January rent shortfall

[Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction \(Stout Risius Ross - viewed Mar. 31, 2021\).](#)

In June 2020, the Aspen Institute estimated nationally, that if the tenant “unemployment rate is 25 percent, 19 million people would be at risk of eviction by September 30, as their unemployment benefits expire, stimulus payments are spent, and savings dwindle; that rises to 23 million if renters’ unemployment rate is 30 percent.” It concluded the risk of eviction at 30% renter unemployment for Minnesota on December 31, 2020 would be 281,085 tenants (if evictions were unlimited). [K. McKay, Z. Neumann & S. Gilman, 20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship \(The Aspen Institute June 19, 2020\).](#)

While the national estimates of eviction in Minnesota might be high, the high unemployment rate among tenants, high rent burden, and limited financial assistance indicated that the eviction numbers would be considerably higher than before the pandemic without an eviction transition plan.

Compared with **16,000** eviction court actions statewide in 2017, the [unemployment data](#) and [Census data](#) supported estimating the number of evictions would well exceed the annual statewide and county numbers without an eviction transition plan. These evictions would overwhelm the legal services housing attorneys and the courts.

B. Planning for after Emergency Executive Order 20-79

The courts, Governor, and Legislature needed to decide how to handle the flood of evictions.



1. Courts

Some courts considered staggered evictions and providing more judicial resources for evictions. Minnesota Supreme Court and District Court pandemic orders are posted here. <http://www.mncourts.gov/Emergency.aspx>

a. Fourth Judicial District for Hennepin County

[Standing Order re 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01 \(Minn. Dist. Ct. 4th Dist. July 22, 2020\) \(Judge Robiner\) \(Appendix PED-19\)](#) provides:

[T]he following provisions will apply for the 60 days following the lifting of the peacetime emergency.

IT IS ORDERED

(1) When Housing Court resumes scheduling hearings for recovery of possession of premises pursuant to Minn. Stat. Ch. 504B, the following operational priorities will apply:

a. First priority: complaints alleging illegal activity, a violation of Minn. Stat. § 504B.171, or a complaint that would have been subject to an exception to Governor’s Executive Orders [20-14](#), [sic] [20-23 \[20-73\]](#), & [20-79](#).

b. Second priority: all cases that were previously scheduled for an initial appearance and filed prior to March 24, 2020 but had the initial appearance cancelled as a result of the peacetime emergency.

c. Third priority: complaints filed during the peacetime emergency that did not qualify as an exception to the Executive Orders suspending eviction actions.

d. Fourth priority: complaints filed after the lifting of the peacetime emergency.

e. Instead of setting many cases for one hearing time as has traditionally been common, smaller calendars noticed for specific timeframes will be scheduled. Parties will have the option to participate in the hearings remotely (using telephone or Zoom) or in-person.

(2) At the initial hearing noticed by summons, the following shall occur:

a. The landlord, landlord’s attorney, or landlord’s agent must affirm under oath that they have a good faith and reasonable belief that the subject property is not a “covered property” for purposes of the CARES Act Sec. 4024(a)(2) or if the property is a “covered

property”, that they have complied with notices requirements outlined in the CARES Act.

b. The parties shall be notified of resources and services available to them at the initial hearing, during the 7-day adjournment, and shall be given the contact information for each of the services (if the services can be provided at the initial hearing, the court will recess to allow for the provision of such services):

I. Mid-Minnesota Legal Aid and Volunteer Lawyers Network are available to consult with and represent income qualifying individuals. HOMELine is a tenant legal advice resource without income limitations.

ii. Hennepin County Emergency Rental Assistance Program, Minnesota Assistance Council for Veterans, and Tenant Resource Center may be able to assist the parties with payment of some or all of the rent due.

iii. The Conflict Resolution Center and Community Mediation & Restorative Services are available to provide free mediation services for landlords and tenants.

iv. The Court will approve out of court settlement agreements filed prior to the pretrial hearing described below, and cancel the pretrial hearing, if the agreement identifies that one of the above resources has been utilized.

(3) Housing court cases shall adjourn and schedule a pretrial hearing as soon as possible but no sooner than (7) calendar days following the initial hearing. Any party that does not appear at the pretrial hearing may be found to be in default.

a. Cases will not be adjourned if: the plaintiff dismisses the complaint, if the defendant was properly served pursuant to Minn. Stat. § 504B.331 and *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013)(review denied) and defendant fails to appear, or if the parties have reached an agreement.

b. Second Judicial District for Ramsey County

[Administrative Order Regarding the Resumption of Housing Court Operations \(Minn. Dist. Ct. 2nd Dist. Aug. 19, 2020\) \(Judge Castro\) \(Appendix PED-19a\)](#) provides after the introduction:

IT IS ORDERED

1. All Eviction Complaints led after the date of this Order, must include a statement which addresses whether:

a. The premise is a “covered dwelling” subject to Section 4024 of the CARES Act.

b. The plaintiff is a “multifamily borrower” under forbearance subject to Section 4024 of the CARES Act; and

c. The plaintiff has provided the defendant with 30 days’ notice to vacate under Sections 4024(c) and 4023(e) of the CARES Act.

d. The plaintiff has complied with paragraph 6 of [Executive Order 20-79](#) requiring all property owners, mortgage holders, or other persons seeking possession to provide a written notice of intent to file an eviction action to the tenant at least 7 days prior to filing the action, or the specified notice period included in the lease, whichever is longer.

2. Judicial officers presiding in Housing Court have the authority to develop the facts of the case, including whether or not the premises is a “covered dwelling,” the plaintiff is a “multifamily borrower” under forbearance subject to Sections 4024 and 4023 of the CARES Act, respectively, and whether proper notices have been given.

3. The Administrative Order Declaring Certain Housing/Eviction Matters Non—Public issued on March 31, 2020 is amended as follows:

a. Cases and case filings categorized as non-emergency and made confidential shall be designated as Confidential<sup>2</sup> by Court Administration.

b. Cases and case filings categorized as non-emergency and made confidential shall be made public once the matter qualifies for a hearing, is scheduled on a court calendar, and a summons issued.

c. Irrespective of paragraph 3b of this Order, court administration shall immediately make the following information available to Ramsey County Emergency Assistance, Neighborhood House, the Dispute Resolution Center, Volunteer Lawyers Network, and Southern Minnesota Regional Legal Services for the purpose of contacting and assisting litigants in the early resolution of their eviction action on all cases made confidential under this order:

i. The court case number

ii. The party and attorney names

iii. Contact information for the parties and attorneys including:

1. Mailing address

2. Phone number

3. Email address

d. Ramsey County Emergency Assistance, Neighborhood House, the Dispute Resolution

Center, Volunteer Lawyers Network, and Southern Minnesota Regional Legal Services shall only use this information to assist with the resolution of pending cases and shall not disseminate this information to any other organizations other than those listed above, a party to the case, or an attorney to a party to the case without further authorization of the court.

4. Complaints that were led during the peacetime emergency and which did not qualify for an exception to the Executive Orders suspending eviction actions shall be set for a hearing to dismiss and notice shall be given to the Landlord. The action shall be dismissed unless, prior to the hearing, the Landlord requests that the action continue and for the court to issue a summons.

5. When [Executive Order 20-79](#) or any successor Executive Orders expire or allow additional residential eviction actions,

a. Cases will be scheduled on block-style calendars with specific timeframes. Parties will have the option to participate in the hearings remotely (using telephone or Zoom) or in—person. The Second Judicial District strongly encourages parties and their attorneys to attend hearings remotely, but will provide social-distancing accommodations for in-person attendance.

b. Court administration shall issue a summons, commanding the person against whom the complaint is made to appear before the court on a day and at a place stated in the summons for all cases where an initial appearance has not been held.

c. For all cases that were previously scheduled for an initial appearance and led prior to March 24, 2020 but had the initial appearance cancelled as a result of the peacetime emergency, service of the new summons shall be made in compliance with [Minn. Stat. § 504B.331](#).

d. For the 60 days following the expiration of the Peacetime Emergency declared in Executive Order 20-01, the parties shall be notified of resources and clinic services available to them at the initial appearance. If parties request clinic services, including legal advice and representation, emergency rental assistance and dispute resolution, the court will recess to allow the provision of such services if possible. If it is not possible to obtain requested services at the initial appearance, the case shall be given a seven (7) day continuance. Parties shall be given contact information for all clinic services.

6. This Administrative Order remains in full force and effect until rescinded or amended by a further court order.

*Id.* at 2-3.

c. Tenth Judicial District for Anoka County

*STANDING ORDER Re: 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01 (Minn. Dist. Ct. 10th Dist. Anoka Cty. Oct. 29, 2020) (Judge Fountain Lindberg) (Appendix PED-36)* provides after the introduction:

Now, therefore, when the Anoka County District Court is able to begin conducting proceedings in all eviction cases, the following provisions are HEREBY ORDERED for the 60 days following the lifting of the peacetime emergency:

(1) When the scheduling of hearings for recovery of possession of premises pursuant to Minn. Stat. Ch. 504B resumes, the following operational priorities will apply:

a. First priority: complaints alleging illegal activity, a violation of Minn. Stat. § 504B.171, or a complaint that would have been subject to an exception to Governor’s Executive Orders [20-14](#), [sic] [20-23](#) [[20-73](#)], & [20-79](#).

b. Second priority: all cases that were previously scheduled for an initial appearance and filed prior to March 24, 2020 but had the initial appearance cancelled as a result of the peacetime emergency.

c. Third priority:

i. Complaints filed after the lifting of the peacetime emergency;

ii. Complaints filed during the peacetime emergency that did not qualify as an exception to the Executive Orders suspending eviction actions; and

iii. Any other case not specifically provided for above.

d. Instead of setting many cases for one hearing time as has traditionally been common, smaller calendars noticed for specific timeframes will be scheduled. Parties will normally be expected to participate in the hearings remotely (using telephone or Zoom). For participants who lack technology to appear remotely, Court Administration will provide a surface, fire tablet, or other device and a room to accommodate a remote appearance. For those cases scheduled for trial, the presiding Judge shall determine whether the matter shall be conducted in-person or by use of remote technology.

(2) At the initial hearing noticed by summons, the following shall occur:

a. The landlord, landlord’s attorney, or landlord’s agent must affirm under oath (1) that they have a good faith and reasonable belief that the subject property is not a “covered property” for purposes of the CARES Act Sec. 4024(a)(2) or if the property is a “covered

property,” that they have complied with notices requirements outlined in the CARES Act; and (2) that they have complied with the 7 day written notice of eviction requirement contained in [Emergency Executive Order 20-79](#).

b. The parties shall be notified of resources and services available to them at the initial hearing, during the 7-day adjournment, and shall be given the contact information for each of the services (if the services can be provided at the initial hearing, the court will recess to allow for the provision of such services):

I. Mid-Minnesota Legal Aid and Volunteer Lawyers Network, Central Minnesota Legal Services, and Judicare of Anoka County, Inc., are available to consult with and represent income qualifying individuals. HOMELine is a tenant legal advice resource without income limitations.

ii. Anoka County Emergency Assistance Program, Minnesota Assistance Council for Veterans, and Tenant Resource Center or other agencies may be able to assist the parties with payment of some or all of the rent due.

iii. The Court may approve out of court settlement agreements filed prior to the resumed admit/deny hearing described below and cancel the hearing. The parties may also submit their agreement to the Court for approval at the resumed admit/deny hearing.

(3) Housing court cases shall adjourn and schedule a resumed admit/deny hearing as soon as possible but no sooner than (7) calendar days following the initial admit/deny hearing. Any party that does not appear at the resumed admit/deny hearing may be found to be in default.

a. Exceptions to 7 Day Adjournment. The following cases need not be adjourned:

i. *Dismissal*. The plaintiff dismisses the complaint;

ii. *Default*. The defendant was properly served and the defendant (or plaintiff) fails to appear;

iii. *Agreement*. The parties have reached an agreement appropriate for disposition; and

iv. *Exigent circumstances*. The complaint alleges circumstances that would be an exception to the current eviction moratorium (a first priority case above)

IT IS SO ORDERED

*Id.* at 1-3.

## 2. Legislature and Governor

Two early competing bills in the Minnesota Senate and House of Representatives planned for opening evictions. The Senate bill would open eviction actions upon enactment by voiding [Emergency Executive Order 20-79](#) and create a staggered set of lease terminations and eviction actions. [Senate F. No. 1470](#). The bill in the House of Representatives would have expanded eviction actions to include claims of material violations during the peacetime emergency declared in [Emergency Executive Order 20-01](#) and provide for staggered eviction actions afterward. [House F. No. 12](#). Their negotiations led to [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#).

## 3. Recommendations for Planning

Advocates argued for a number of policies.

### Courts:

- Staggered evictions
- More judicial resources for evictions
- Covered-property plaintiff certification of compliance with the Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024. *See* discussion, *supra*, at [I.B.](#) and [III.B.1.b.](#)

### Legislature and Governor:

- Expand staggered evictions to start *when economic and health data support it*
- Funding:
  - Financial assistance to tenants and landlords
  - Financial assistance to industries that employ tenants
  - Financial assistance to shelters
  - Emergency Assistance
  - Legal aid programs
  - Mediation programs
  - More judicial resources for evictions

### Advocacy and Mediation:

- More attorney representation for tenants
- More mediators for tenants and landlords

## CHAPTER VII: EVICTIONS UNDER MINNESOTA SESSION LAWS 2021, 1ST SPECIAL SESSION, CHAPTER 8, H. F. NO. 4, ARTICLE 5

### A. Introduction

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) ended Executive Orders [20-14](#), [20-73](#), and [20-79](#) and replaced them with eviction transition on

June 30, 2021 through June 1, 2020. It set several dates for gradually expanding eviction grounds.

B. Heath and Economics as the Pandemic Continues

1. Health Impact of Evictions in the Pandemic

In June 2021 when the Minnesota Legislature negotiated the eviction transition law, pandemic infections and deaths in Minnesota were low, often with less than 100 positive test results and 5 deaths per day. On August 30, 2021, there were 1,939 positive test results and on August 24, 2021, there were 12 deaths. Situation Update for COVID-19 (Minnesota Department of Health - viewed Sep. 9, 2021): [Positive Cases by Date Specimen Collected Data Table](#) and [Deaths Data Table](#).

Numerous studies in 2020 and 2021 connect evictions with increased infections and deaths. *See* discussion, *supra*, at [I.F.](#)

2. Census Data: Tenants, Unemployment, and Rents

Tenants have suffered economically during the pandemic. *See* discussion, *supra*, at [VI.A.2.](#)

Unfortunately, United States Census Bureau data shows that their suffering has continued. In [Week 36 Household Pulse Survey: August 18 – August 30 \(United States Department of Commerce Sep. 8, 2021\)](#), as of September 8, 2021, out of 748,259 adult Minnesota tenants estimated by the Census, it estimated:

- 317,463 (42.4) were not employed in the last 7 days. [Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota \(United States Department of Commerce viewed Sep. 9, 2021\)](#).
- 106,453 (14.2%) tenants or household members experienced loss of employment income in last 4 weeks. [Id.](#)
- 75,752 (10.1%) were not currently caught up on rent payments. [Id.](#)
- 146,711 (19.6%) had no or slight confidence in the ability to make the next month's payment. [Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics: Minnesota \(United States Department of Commerce viewed Sep. 9, 2021\)](#).
- Of the 75,752 tenants estimated to not be currently caught up on rent payments, 17,549 (23.2%) very likely or somewhat likely to leave home due to eviction in next two months.



[Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics: Minnesota \(United States Department of Commerce viewed Sep. 9, 2021\).](#)

C. Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5

1. Text

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#)  
provides:

ARTICLE 5  
EVICTION MORATORIUM PHASEOUT

Section 1. EXECUTIVE ORDERS [20-14](#), [20-73](#), AND [20-79](#) VOID.

Notwithstanding Minnesota Statutes, chapter 12, or any other law to the contrary, Executive Orders [20-14](#), [20-73](#), and [20-79](#) are null and void.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 2. EVICTION MORATORIUM PHASEOUT.

(a) For purposes of this section, a "COVID-19 emergency rental assistance program" means 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.

(b) Notwithstanding any law to the contrary, the following actions are prohibited:

(1) termination or nonrenewal of residential leases, except:

(i) at the request of a tenant or where the termination is due to the tenant seriously endangering the safety of others or significantly damaging property;

(ii) for violations under [Minnesota Statutes, section 504B.171, subdivision 1](#);

(iii) for material violations of the lease other than nonpayment of rent; and

(iv) from and after 45 days after the date of enactment of this act, for those with outstanding rent who are ineligible for rental assistance through a COVID-19 emergency rental assistance program;

(2) filing of eviction actions under Minnesota Statutes, section 504B.285 or 504B.291, except:

(i) where the tenant seriously endangers the safety of others or significantly damages property;

(ii) for violations under [Minnesota Statutes, section 504B.171, subdivision 1](#);

(iii) from and after 15 days after the date of enactment of this act, for material violations of the lease other than nonpayment of rent; and

(iv) from and after 75 days after the date of enactment of this act, for those with outstanding rent who are ineligible for rental assistance through a COVID-19 emergency rental assistance program;

(3) termination of a residential rental agreement or filing an eviction action under [Minnesota Statutes, section 327C.09](#), except for terminations or eviction actions under [Minnesota Statutes, section 327C.09, subdivision 3](#), or under [Minnesota Statutes, section 327C.09, subdivision 5](#), if the case is based on the resident endangering the safety of other residents or park personnel; and

(4) delivery of default notices by owners of security interests in manufactured homes located in Minnesota pursuant to [Minnesota Statutes, section 327.64](#). A secured party is also prohibited from commencing an action for a court order to remove an occupant from a manufactured home.

(c) Notwithstanding paragraph (b), a landlord may file an eviction action or proceed with an eviction action against a tenant:

(1) who is eligible for assistance through a COVID-19 emergency rental assistance program; and

(2) who refuses to apply for assistance through the program, refuses to provide information needed by the landlord to apply for assistance on the tenant's behalf, or refuses to provide the landlord with proof that the tenant applied for assistance through the program.

(d) Nothing in this section shall:

(1) prohibit an action where the tenant or occupant abandons the premises and relief is sought under Minnesota Statutes, section [504B.271](#) or [504B.365](#);

(2) reduce the rent owed by the tenant to the landlord, prevent the landlord from

collecting rent owed, or reduce arrears owed by a tenant for rent; or

(3) prohibit a tenant who is ineligible for assistance through a COVID-19 emergency rental assistance program from applying for or obtaining rental assistance through other programs.

(e) This section expires 105 days after the date of enactment of this act.

EFFECTIVE DATE. This section is effective the day following final enactment.

### Sec. 3. COVID-19 EMERGENCY RENTAL ASSISTANCE NOTIFICATION.

(a) At least 15 days prior to filing an eviction action against a tenant based on nonpayment of rent, a landlord must provide a written notice to the tenant with the following information:

(1) the state eviction moratorium has ended and the tenant may soon be subject to an eviction action;

(2) the total amount of rent past due; and

(3) a tenant should visit [renthelpmn.org](http://renthelpmn.org) or call 211 to see if they are eligible for financial assistance.

(b) If the court finds that proper notice was not provided, the court may exercise discretion in staying an eviction proceeding until proper notice is provided.

(c) Where a landlord has substantially complied with this section, a lack of strict compliance with this section is not a defense to an action brought under Minnesota Statutes, chapter 504B, and shall not constitute grounds for dismissal of such an action.

(d) This section expires 105 days after the date of enactment of this act.

EFFECTIVE DATE. This section is effective the day following final enactment.

### Sec. 4. EVICTIONS; PENDING APPLICATIONS FOR RENTAL ASSISTANCE.

Notwithstanding any law to the contrary, including section 2, 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.

EFFECTIVE DATE. This section is effective the day following final enactment.

## 2. Highlights

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) expands eviction action grounds from June 30, 2021 through June 1, 2022.

### a. June 30, 2021

- The tenant seriously endangered safety of others or significantly damages property
- The tenant violated [Minn. Stat. § 504B.171, Subd. 1](#).
- The manufactured home park resident violated [Minn. Stat. § 327C.09, Subds. 3 and 5](#), if endangering the safety of other residents or park personnel.
- Nonpayment of rent if the tenant is (1) eligible for state emergency rental assistance and (2) refuses to apply or provide information to the landlord or refuses to provide proof to the landlord that the tenant applied.
- The landlord must give a pre-filing notice of 15 days prior to filing for nonpayment of rent, stating that the moratorium ended and the tenant may be subject to eviction, the total rent due, and the availability of assistance from calling 211 or going to [RentHelpMN](#). The notice was not limited to residential tenancies, so it included commercial tenancy, mortgage foreclosure, and contract for deed cancellation eviction court cases claiming nonpayment of rent. The court may exercise discretion in staying eviction proceeding if it finds improper notice. The lack of strict compliance not a defense. The requirement expires on October 12, 2021.
- The tenant or occupant abandoned the premises.
- Residential landlords cannot file eviction actions for nonpayment of rent against tenants with pending application for 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 (state emergency rental assistance).
- These limitations apply to eviction court cases for commercial leases, mortgage foreclosure and contract for deed cancellation.

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) eliminated the landlord family residency ground and its notice requirement that was available under [Emergency Executive Order 20-79](#), as well as the requirement of a notice of intention to file for all eviction actions to tenants.

### b. July 14, 2021

- ***New: Residential and commercial landlords can file eviction actions where the tenant***

***commits material lease violations.***

- The tenant seriously endangers safety of others or significantly damages property
- The tenant violated [Minn. Stat. § 504B.171, Subd. 1.](#)
- The manufactured home park resident violated [Minn. Stat. § 327C.09, Subds. 3 and 5](#), if endangering the safety of other residents or park personnel.
- Nonpayment of rent if the tenant is (1) eligible for state emergency rental assistance and (2) refuses to apply or provide information to the landlord or refuses to provide proof to the landlord that the tenant applied.
- The landlord must give a pre-filing notice of 15 days prior to filing for nonpayment of rent, stating that the moratorium ended, and the tenant may be subject to eviction, the total rent due, and the availability of assistance from calling 211 or going to [RentHelpMN](#). The notice was not limited to residential tenancies, so it included commercial tenancy, mortgage foreclosure, and contract for deed cancellation eviction court cases claiming nonpayment of rent. The court may exercise discretion in staying eviction proceeding if it finds improper notice. The lack of strict compliance not a defense. The requirement expires on October 12, 2021.
- The tenant or occupant abandons the premises.
- Residential landlords cannot file eviction actions for nonpayment of rent against tenants with pending application for 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 (state emergency rental assistance).
- These limitations apply to eviction court cases for commercial leases, mortgage foreclosure and contract for deed cancellation.

c. September 12, 2021

- ***New: Residential and commercial landlords can file nonpayment eviction actions for those ineligible for state emergency rental assistance.***
- Nonpayment of rent if the tenant is (1) eligible for state emergency rental assistance and (2) refuses to apply or provide information to the landlord or refuses to provide proof to the landlord that the tenant applied.
- The landlord must give a pre-filing notice of 15 days prior to filing for nonpayment of rent, stating that the moratorium ended, and the tenant may be subject to eviction, the total rent due, and the availability of assistance from calling 211 or going to [RentHelpMN](#). The notice was not limited to residential tenancies, so it included commercial tenancy, mortgage foreclosure, and contract for deed cancellation eviction court cases claiming nonpayment of rent. The court may exercise discretion in staying eviction proceeding if it finds improper notice. The lack of strict compliance not a defense. The requirement expires on October 12, 2021.
- Residential and commercial landlords can file eviction actions where the tenant commits material lease violations.
- The tenant seriously endangers safety of others or significantly damages property
- The tenant violated [Minn. Stat. § 504B.171, Subd. 1.](#)

- The manufactured home park resident violated [Minn. Stat. § 327C.09, Subds. 3 and 5](#), if endangering the safety of other residents or park personnel.
- The tenant or occupant abandons the premises.
- Residential landlords cannot file eviction actions for nonpayment of rent against tenants with pending application for 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 (state emergency rental assistance).
- These limitations apply to eviction court cases for commercial leases, mortgage foreclosure and contract for deed cancellation.

d. October 12, 2021

- The rent notice requirement ends for residential and commercial landlords.
- Residential landlords can terminate or not renew leases for file eviction court cases for any reason allowed by law except landlords cannot file eviction actions for nonpayment of rent against tenants with pending state emergency rental assistance application.
- Limitations on lease termination and nonrenewal do not apply to commercial leases.
- Through June 1, 2022, landlords cannot file eviction actions for nonpayment of rent against tenants with pending state emergency rental assistance application.

e. State Emergency Rental Assistance

- Tenants must provide landlords or the court with proof of pending state emergency rental assistance application and the reason for delay in processing the application if the tenant reasonably has access to the information.
- Emergency rent assistance only includes 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.
- See discussion, *infra*, at [VIII.B.](#)

f. Definitions

Similar to [Emergency Executive Order 20-79](#), [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) did not include definitions of key terms. See discussion, *supra*, at [I.A.2.b.\(10\)](#) for a discussion of residential tenants.

3. No Retroactive Application of Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5

In [Kennedy v. \\_\\_\\_\\_\\_](#), No. 25-CV-21-1092 (Minn. Dist. Ct. 1st. Dist. July 13, 2021) (Judge Biren) ([Appendix PED-61](#)), the landlord filed the eviction action in June 2021 under [Emergency Executive Order 20-79](#). The court first heard the matter in June and scheduled a trial

for July 2021. Prior to trial, the court concluded that [Emergency Executive Order 20-79](#) would govern the case since [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) was not retroactive to cases filed before its effective date.

In [English v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-21-195 (Minn. Dist. Ct. 2nd Dist. Aug. 5, 2021) (Judge Nelson) (Appendix PED-63), the landlord filed the eviction action on July 6, 2021, claiming loud noise, being drunk, leaving the door unlocked and endangering the landlord, smoking, and using illegal drugs. The court conducted a trial on August 4, 2021, where the landlord testified generally that the tenant harmed the property and left it dirty, she did not specifically testify about the claim or presented supporting evidence, nor did she present any evidence on illegal drugs. The court concluded that since she filed the eviction action before July 14, 2021, she could not assert material lease violations, and that with the remaining claim of illegal drugs, she had not presented evidence of testimony to support the claim. The court ordered entry of judgment for the tenant.

In [Orr v. \\_\\_\\_\\_\\_](#), No. 18-CV-21-2162 (Minn. Dist. Ct. 9th Dist. Aug. 6, 2021) (Referee Davies) (Appendix PED-65), the plaintiff filed the eviction action when Emergency Executive Order 20-79 was in effect but the court heard the trial in August 2021. The parties had been in a long-term domestic relationship. The plaintiff purchased the property in 2017 where he and the defendant resided with their child. The parties did not have a lease and the defendant did not pay rent. The defendant obtained a domestic abuse no contact order against the plaintiff and the plaintiff moved into his parents' house. The plaintiff claimed the need to move back to the property, illegal drugs, and substantial property damage. The court found that the plaintiff did not prove he needed to leave his parents' house, there was no evidence the defendant used illegal drugs, the defendant had removed sheetrock damaged by the plaintiff, and the defendant would be homeless if evicted. The court concluded that the plaintiff had not proved grounds for eviction under [Emergency Executive Order 20-79](#) or [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#). The court dismissed the action with prejudice and ordered entry of judgment for the defendant.

4. Expiration of Emergency Executive Orders Did Not Extinguish Rights and Defenses Accrued under Them

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) terminated the executive orders but did not extinguish rights and defenses accrued under them. *Fairmont Housing and Redevelopment Authority v. Winter*, 2021 WL 5441936, \_\_\_\_\_ N.W.2d \_\_\_\_\_ (Minn. Ct. App. 2021).

C1. Procedural Court Orders

Some district courts have issued procedural orders for eviction actions during the pandemic.

- [Standing Order re 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01 \(Minn. Dist. Ct. 4th Dist. July 22, 2020\) \(Judge Robiner\) \(Appendix PED-19\)](#)
  - [Administrative Order Regarding the Resumption of Housing Court Operations \(Minn. Dist. Ct. 2nd Dist. Aug. 19, 2020\) \(Judge Castro\) \(Appendix PED-19a\)](#)
  - [STANDING ORDER Re: 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01 \(Minn. Dist. Ct. 10th Dist. Anoka Cty. Oct. 29, 2020\) \(Judge Fountain Lindberg\) \(Appendix PED-36\)](#)
  - Other Minnesota Supreme Court and District Court pandemic orders are posted at [COVID-19 Information](#).
- D. Covered Properties under the Coronavirus Aid, Relief, and Economic Security (CARES) Act § 4024

Rescission of [Emergency Executive Order 20-79](#) still leaves some properties governed by the [CARES Act § 4024](#) that requires a 30-day lease termination notice for covered properties for all eviction bases with no expiration date, and no late fees from March 27 through July 25, 2020. See discussion, *supra*, at [I.B.](#) and [III.B.1.b.](#)

E. CDC Eviction Suspension Order

The CDC issued another suspension through October 3, 2021. [CDC Eviction Moratorium \(National Housing Law Project Aug. 20, 2021\)](#). In [Alabama Association of Realtors, et al. v. Department of Health and Human Services, et al., 594 U. S. \\_\\_\\_\\_ \(2021\)](#), the United States Supreme Court invalidated the order. See discussion, *supra*, at [I.C.](#)

F. Answer Forms

1. Poverty Law Answer Form No. A1v1 applies to eviction actions under [Emergency Executive Order 20-79](#).

2. Answer Form No. A1v2 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) through October 12, 2021.

3. Answer Form No. A1v3 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) after October 12, 2021 through June 1, 2022.

*See Pandemic Eviction and Other Housing Laws and Rules*

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



## G. Service Defenses

Service is governed by [Minn. Stat. § 504B.331](#); Residential Eviction Defense and Tenant Claims in Minnesota at [VI.C.](#)

## H. Precondition Defenses

### 1. In General

There is a detailed discussion of precondition defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.D.](#)

### 2. Landlord Disclosure

In [Persaud v. \\_\\_\\_\\_\\_, No. 27-CV-HC-21-394 \(Minn. Dist. Ct. 4th Dist. July 20, 2021\) \(Referee Houghtaling\) \(Appendix PED-60\)](#), the court issued entry of judgment for the tenant and granted expungement where the landlord did not disclose contact information to the tenant under [Minn. Stat. § 504B.181](#), the person who appeared for the plaintiff did not provide a power of authority, the court had no jurisdiction over the nonpayment of rent claim, the landlord did not attach a lease to support the material breach claim, and the landlord could not terminate the lease without complying with [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5.](#)

*See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.D.2a.](#)

### 3. Power of Authority

In [Persaud v. \\_\\_\\_\\_\\_, No. 27-CV-HC-21-394 \(Minn. Dist. Ct. 4th Dist. July 20, 2021\) \(Referee Houghtaling\) \(Appendix PED-60\)](#), the court issued entry of judgment for the tenant and granted expungement where the landlord did not disclose contact information to the tenant under [Minn. Stat. § 504B.181](#), the person who appeared for the plaintiff did not provide a power of authority, the court had no jurisdiction over the nonpayment of rent claim, the landlord did not attach a lease to support the material breach claim, and the landlord could not terminate the lease without complying with [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5.](#)

*See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.D.1a.](#)

## I. Eviction Claims Available on June 30, 2021

### 0. Pre-filing Termination Notices

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#)

eliminated the landlord family residency ground and its notice requirement that was available under [Emergency Executive Order 20-79](#), as well as the requirement of a notice of intention to file for all eviction actions to tenants.

The landlord must give a pre-filing notice of 15 days prior to filing for nonpayment of rent, stating that the moratorium ended, and the tenant may be subject to eviction, the total rent due, and the availability of assistance from calling 211 or going to [RentHelpMN](#). The notice was not limited to residential tenancies, so it included commercial tenancy, mortgage foreclosure, and contract for deed cancellation eviction court cases claiming nonpayment of rent. The court may exercise discretion in staying eviction proceeding if it finds improper notice. The lack of strict compliance not a defense. The requirement expires on October 12, 2021.

Other notice requirements under federal, state, and local laws and the lease might apply:

- CARES Act Covered Properties. *See* discussion, *supra*, at [I.B.](#)
- Manufactured (mobile) home park lot tenancies. *See* discussion, *supra*, at [III.B.1.d.](#)
- Tenants following mortgage foreclosure or contract for deed cancellation. *See* discussion, *supra*, at [III.B.1.e.](#)
- Local ordinances. *See* discussion, *supra*, at [III.B.1.f.](#)
- Termination notice required by the lease. *See* discussion, *supra*, at [III.B.1.c.](#)

1. Minn. Stat. § 504B.171 Claims

*See* discussion, *supra*, at [III.C.](#) for a discussion of [Minn. Stat. § 504B.171](#) and decisions under the Emergency Executive Orders.

In [English v. \\_\\_\\_\\_\\_](#), No. 62-HG-CV-21-195 (Minn. Dist. Ct. 2nd Dist. Aug. 5, 2021) (Judge Nelson) (Appendix PED-63), the landlord filed the eviction action on July 6, 2021, claiming loud noise, being drunk, leaving the door unlocked and endangering the landlord, smoking, and using illegal drugs. The court conducted a trial on August 4, 2021, where the landlord testified generally that the tenant harmed the property and left it dirty, she did not specifically testify about the claim or presented supporting evidence, nor did she present any evidence on illegal drugs. The court concluded that since she filed the eviction action before July 14, 2021, she could not assert material lease violations, and that with the remaining claim of illegal drugs, she had not presented evidence of testimony to support the claim. The court ordered entry of judgment for the tenant.

In [Narvaez v. \\_\\_\\_\\_\\_](#), No. 74-CV-21-986 (Minn. Dist. Ct. 3rd Dist. Aug. 17, 2021) (Judge Bueltel) (Appendix PED-64), the plaintiff claimed that the tenant allowed illegal drugs on the property in violation of [Minn. Stat. § 504B.171](#). The court found that the parties created a tenancy at will when the landlord rented transitional housing to the tenant, but the landlord did not prove a violation of [Minn. Stat. § 504B.171](#) and at best, the tenant only possessed petty misdemeanor amounts of marijuana and drug paraphernalia under Minn. Stat. §§ [152.027](#),

[152.092](#), and [609.02, Subd. 4a](#).

In [Orr v. \\_\\_\\_\\_\\_](#), No. 18-CV-21-2162 (Minn. Dist. Ct. 9th Dist. Aug. 6, 2021) (Referee Davies) (Appendix PED-65), the plaintiff filed the eviction action when Emergency Executive Order 20-79 was in effect but the court heard the trial in August 2021. The parties had been in a long-term domestic relationship. The plaintiff purchased the property in 2017 where he and the defendant resided with their child. The parties did not have a lease and the defendant did not pay rent. The defendant obtained a domestic abuse no contact order against the plaintiff and the plaintiff moved into his parents' house. The plaintiff claimed the need to move back to the property, illegal drugs, and substantial property damage. The court found that the plaintiff did not prove he needed to leave his parents' house, there was no evidence the defendant used illegal drugs, the defendant had removed sheetrock damaged by the plaintiff, and the defendant would be homeless if evicted. The court concluded that the plaintiff had not proved grounds for eviction under [Emergency Executive Order 20-79](#) or [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#). The court dismissed the action with prejudice and ordered entry of judgment for the defendant.

There is a detailed discussion of breach of lease defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G](#).

## 2. Significant Property Damage Claims

See discussion, *supra*, at [III.D](#). for a discussion of decisions under the Emergency Executive Orders.

In [Orr v. \\_\\_\\_\\_\\_](#), No. 18-CV-21-2162 (Minn. Dist. Ct. 9th Dist. Aug. 6, 2021) (Referee Davies) (Appendix PED-65), the plaintiff filed the eviction action when Emergency Executive Order 20-79 was in effect but the court heard the trial in August 2021. The parties had been in a long-term domestic relationship. The plaintiff purchased the property in 2017 where he and the defendant resided with their child. The parties did not have a lease and the defendant did not pay rent. The defendant obtained a domestic abuse no contact order against the plaintiff and the plaintiff moved into his parents' house. The plaintiff claimed the need to move back to the property, illegal drugs, and substantial property damage. The court found that the plaintiff did not prove he needed to leave his parents' house, there was no evidence the defendant used illegal drugs, the defendant had removed sheetrock damaged by the plaintiff, and the defendant would be homeless if evicted. The court concluded that the plaintiff had not proved grounds for eviction under [Emergency Executive Order 20-79](#) or [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#). The court dismissed the action with prejudice and ordered entry of judgment for the defendant.

There is a detailed discussion of breach of lease defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G](#).

### 3. Substantial Endangerment Claims

See discussion, *supra*, at [III.E.](#) for a discussion of decisions under the Emergency Executive Orders.

There is a detailed discussion of breach of lease defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.](#)

### 4. Abandonment

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) added the new eviction action ground that the tenant or occupant abandoned the premises. While claims of abandonment rarely have been litigated in eviction actions, the issue has been litigated in lockout actions. See Residential Eviction Defense and Tenant Claims in Minnesota at [XII.B.1.b.\(3\)\(j\).](#)

### 5. Nonpayment of Rent

#### a. Limitations

In the first stage of the eviction transition, nonpayment of rent claims are limited. First, claimed were limited to cases where the tenant is (1) eligible for state emergency rental assistance and (2) refuses to apply or provide information to the landlord or refuses to provide proof to the landlord that the tenant applied.

Second, residential landlords cannot file eviction actions for nonpayment of rent against tenants with pending application for 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 (state emergency rental assistance).

In [Persaud v. \\_\\_\\_\\_\\_, No. 27-CV-HC-21-394 \(Minn. Dist. Ct. 4th Dist. July 20, 2021\) \(Referee Houghtaling\) \(Appendix PED-60\)](#), the court issued entry of judgment for the tenant and granted expungement where the landlord did not disclose contact information to the tenant under [Minn. Stat. § 504B.181](#), the person who appeared for the plaintiff did not provide a power of authority, the court had no jurisdiction over the nonpayment of rent claim, the landlord did not attach a lease to support the material breach claim, and the landlord could not terminate the lease without complying with [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5.](#)

#### b. Notice

The landlord must give a pre-filing notice of 15 days prior to filing for nonpayment of rent, stating that the moratorium ended, and the tenant may be subject to eviction, the total rent

due, and the availability of assistance from calling 211 or going to [RentHelpMN](#). The notice was not limited to residential tenancies, so it included commercial tenancy, mortgage foreclosure, and contract for deed cancellation eviction court cases claiming nonpayment of rent. The court may exercise discretion in staying eviction proceeding if it finds improper notice. The lack of strict compliance not a defense. The requirement expires on October 12, 2021.

Other notice requirements under federal, state, and local laws and the lease also might apply:

- CARES Act Covered Properties. *See* discussion, *supra*, at [I.B.](#)
- Manufactured (mobile) home park lot tenancies. *See* discussion, *supra*, at [III.B.1.d.](#)
- Tenants following mortgage foreclosure or contract for deed cancellation. *See* discussion, *supra*, at [III.B.1.e.](#)
- Local ordinances. *See* discussion, *supra*, at [III.B.1.f.](#)
- Termination notice required by the lease. *See* discussion, *supra*, at [III.B.1.c.](#)

There is a detailed discussion of notice defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.](#) *See* discussion, *supra*, at [III.B.](#)

#### c. Proof: Assistance Eligibility and Refusal

The landlord has the burden of proof that the tenant is (1) *eligible* for state emergency rental assistance and (2) *refuses* to apply or provide information to the landlord or *refuses* to provide proof to the landlord that the tenant applied.

Refusal is more than inaction.

The act of one who has, by law, a right and power of having or doing something of advantage, and declines it Also, the declination of a request or demand, or the omission to comply with some requirement of law, as the result of a positive intention to disobey. In the latter sense, the word is often coupled with “neglect,” as, if a party shall “neglect or refuse” to pay a tax. file an official bond, obey an order of court, etc. But “neglect” signifies a mere omission of a duty, which may happen through inattention, dilatoriness, mistake, or inability to perform, while “refusal” implies the positive denial of an application or command, or at least a mental determination not to comply.

#### [The Law Dictionary: What is REFUSAL?](#)

Requiring a willful decision not to comply is consistent with the way numerous courts around the country have interpreted statutes that use the term “refuse” or “refusal” as a statutory precondition. *State ex rel. Kalal v. Circuit Court for Dane Cty. (In re Criminal Complaint)*, 681 N.W.2d 110, 126 (“To refuse is “to indicate unwillingness to do, accept, give, or allow.” As the term is ordinarily understood, a “refusal” involves a decision to reject a certain choice or course

of action.” (quoting *The American Heritage Dictionary of the English Language* 1519 (3d ed. 1992)); *Weinstein v. Vaughan (In re Vaughan)*, 2015 Bankr. LEXIS 4570, at \*31-32 (Bankr. D. Nev. July 13, 2015). (“The majority of courts interpreting § 727(a)(6)(A) have found that ‘refusal’ requires a showing that the debtor willfully or intentionally refused to obey the order (i.e., something more than a mere failure to obey the order through inadvertency, mistake or inability to comply).”).

c1. Pending Applications for Emergency Rental Assistance

Residential landlords cannot file eviction actions for nonpayment of rent against tenants with pending application for 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 (state emergency rental assistance).

The eviction transition law does not specify the remedies.

Sec. 4. EVICTIONS; PENDING APPLICATIONS FOR RENTAL ASSISTANCE.

Notwithstanding any law to the contrary, including section 2, 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.

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5, §4.](#)

If the landlord filed an eviction action claiming nonpayment of rent against a tenant with a pending application, the court should dismiss it since the filing of the action was illegal. If after an eviction action is filed, the tenant applies for emergency rental assistance, the court cannot proceed with the action. The court probably would rather not have a lot of eviction actions sitting on hold for a long time awaiting resolution of applications. If the state grants the application and the landlord or tenant does not move for dismissal, the court would not know. If the court dismisses the action, the court would not need to know the outcome of the application. If the state denies the application, the landlord could file a new eviction action.

d. Nonpayment of Rent Defenses

(1) List of Defenses

There is a detailed discussion of nonpayment of rent defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.E.](#)

## (2) Habitability

See [Minn. Stat. § 504B.161](#); Residential Eviction Defense and Tenant Claims in Minnesota at [X.I.E.1.](#)

In *Fritz v. Warthen*, 298 Minn. 48, 61-62, 213 N.W.2d 339, 343 (1973), the court stated that the trial court shall order the defendant to provide security in one of three ways: (1) pay into court "rent to be withheld" and "any future rent withheld," (2) deposit such rents in escrow subject to appropriate terms and conditions, or (3) provide adequate security if such is more suitable under the circumstances. The Court based the need for payment of rent or security on its concern that the plaintiff may need the rent to pay for expenses of the premises during the unlawful detainer action, and if the plaintiff prevails, the plaintiff would be harmed if the rent could not be collected and the action delayed eviction of the defendant. *Id.*

Many courts regularly require the defendants to pay into court back and future withheld rent, without consideration of the factors discussed in *Fritz* and the other methods of providing security outlined in *Fritz*. The court should not require prepayment of back rent where the defendant withheld the rent but no longer has all of the money, the defendant has a claim that the covenants have been breached, and there will be little or no delay in proceeding to trial. In such cases, prepayment of back rent should not be required for five reasons. See [James Poradek and Luke Grundman, \*Fixing a Hole: The Fritz Defense Revisited\*, Bench and Bar \(Sep. 1, 2021\)](#); Residential Eviction Defense and Tenant Claims in Minnesota at [V.I.E.1.c.](#)

## (3) Rental Licenses

In [\\_\\_\\_\\_\\_ v. Johnson, No. 27-CV-20-1622 \(Minn. Dist. Ct. 4th Dist. Sep. 25, 2020\) \(Judge Fraser\) \(Appendix PED-52\)](#), the former tenant sued the former landlord for damages for failure to obtain a rental license. The court granted the plaintiff's motion for partial summary judgment, concluding (1) the tenant was entitled to \$37,808 in rent paid, (2) the statute of limitations [Minn. Stat. § 541.05](#) limited damages to six years before filing the action, (3) the tenant was entitled to relief under the Prevention of Consumer Fraud Act, Minn. Stat. §§ [325F.69, subd. 1](#) and [8.31, subd. 3a](#), and claims of fraud, fraud in the inducement, and unjust enrichment. The court also ordered the landlord to comply with discovery requests.

## (4) Impossibility or Impracticability of Performance

See discussion, *infra*, at [VIII.A.1.e.](#)

## (5) Redemption

Tenants should ask for more time to redeem. There is no limit by statute or case law on the amount of time the court can give the tenant to pay rent due or conditions the court can consider. *614 Co. v. D. H. Overmayer*, 297 Minn. 395, 396, 211 N.W.2d 891, 893 (1973),



affirming [First and Second Interlocutory orders, No. 204678 \(Minn. Dist. Ct. 2nd Dist. Apr. 22 and July 9, 1972\) \(RED Appendix 54\)](#) (Affirmed trial court orders allowing commercial tenant one month to pay amount in default). *See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.E.20](#).

6. Landlord Family Residency Claims No Longer Are Available

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) eliminated the landlord family residency ground and its notice requirement that was available under [Emergency Executive Order 20-79](#).

J. Eviction Claims Available on July 14, 2021

1. New Claim: Material Breach

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) added the eviction claim of a material breach of the lease effective July 14, 2021.

In an eviction action alleging breach of lease, the landlord must prove a material breach or substantial failure in performance. *Cut Price Super Markets v. Kingpin Foods, Inc.*, 256 Minn. 339, 351, 98 N.W.2d 257, 266 (1959); *Cloverdale Foods of Minnesota, Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 49 (Minn. Ct. App. 1998). To determine present possessory rights, it is necessary to determine not only the truth of the allegations in the complaint, but also whether the plaintiff demonstrates a "material" breach of the lease agreement. 580 N.W.2d at 49. In *Skogberg v. Huisman*, No. C7-02-2059, 2003 WL 22014576 (Minn. Ct. App. 2003) (unpublished), the court cited *Cloverdale Foods of Minn., Inc.*, 580 N.W.2d 46 (Minn. Ct. App. 1998), noting that a material breach is "[a] substantial breach of contract, usu[ally] excusing the aggrieved party from further performance and affording it the right to sue for damages" which "'goes to the root or essence of the contract" and is "so fundamental to the contract that the failure to perform that obligation defeats an essential purpose of the contract." (citations omitted). *See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.19](#).

In [v. Distinguished Prop., LLC, No. 27-CV-HC-21-118 \(Minn. Dist. Ct. 4th Dist. June 9, 2021\) \(Referee Houghtaling\) \(Appendix PED-57a\)](#), the parties settled a tenant remedies action in which the tenants would vacate the property and the landlord would pay \$1,000 to the tenants and an additional \$3,000 after the tenants vacated the property, removed personal property, and returned keys. The landlord refused to make the second payment claiming that the tenants left personal property and did not return keys. The court found that the tenants substantially complied with the agreement by vacating and leaving keys, and that leaving a few personal items was not a material breach. The court ordered the landlord to make the payment within 10 days.

In [Persaud v. \\_\\_\\_\\_\\_, No. 27-CV-HC-21-394 \(Minn. Dist. Ct. 4th Dist. July 20, 2021\)](#)



[\(Referee Houghtaling\) \(Appendix PED-60\)](#), the court issued entry of judgment for the tenant and granted expungement where the landlord did not disclose contact information to the tenant under [Minn. Stat. § 504B.181](#), the person who appeared for the plaintiff did not provide a power of authority, the court had no jurisdiction over the nonpayment of rent claim, the landlord did not attach a lease to support the material breach claim, and the landlord could not terminate the lease without complying with [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#).

In [English v. \\_\\_\\_\\_\\_, No. 62-HG-CV-21-195 \(Minn. Dist. Ct. 2nd Dist. Aug. 5, 2021\) \(Judge Nelson\) \(Appendix PED-63\)](#), the landlord filed the eviction action on July 6, 2021, claiming loud noise, being drunk, leaving the door unlocked and endangering the landlord, smoking, and using illegal drugs. The court conducted a trial on August 4, 2021, where the landlord testified generally that the tenant harmed the property and left it dirty, she did not specifically testify about the claim or presented supporting evidence, nor did she present any evidence on illegal drugs. The court concluded that since she filed the eviction action before July 14, 2021, she could not assert material lease violations, and that with the remaining claim of illegal drugs, she had not presented evidence of testimony to support the claim. The court ordered entry of judgment for the tenant.

There is a detailed discussion of breach of lease defenses in Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G](#).

2. Eviction Claims Available as of June 30, 2021 Remain Available

*See* discussion, *supra*, at [VII.I](#).

K. Eviction Claims Available on September 12, 2021

1. New Claim: Nonpayment of Rent by Tenants Ineligible for State Emergency Rental Assistance

[Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) added the eviction claim of nonpayment of rent by tenants ineligible for state emergency rental assistance effective September 12, 2021. The landlord has the burden of proof that the tenant is ineligible.

This claim is additional and separate from the claim available June 30, 2021 of nonpayment of rent if the tenant is (1) eligible for state emergency rental assistance and (2) refuses to apply or provide information to the landlord or refuses to provide proof to the landlord that the tenant applied. *See* discussion, *supra*, at [VII.I.5](#).

Residential landlords cannot file eviction actions for nonpayment of rent against tenants with pending application for 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 (state emergency rental assistance).

*See* discussion, *supra*, at [VII.I.5.](#) on nonpayment defenses.

2. Eviction Claims Available as of June 30 and July 14, 2021 Remain Available

*See* discussion, *supra*, at [VII.I](#) and [VII.J.](#)

L. Eviction Claims Available on October 12, 2021

1. Elimination of Most but Not All Eviction Limitations

Effective October 12, 2021, most eviction restrictions ended. This includes the requirement of a state nonpayment of rent eviction notice.

2. Notices

Other notice requirements under federal, state, and local laws and the lease might apply:

- CARES Act Covered Properties. *See* discussion, *supra*, at [I.B.](#)
- Manufactured (mobile) home park lot tenancies. *See* discussion, *supra*, at [III.B.1.d.](#)
- Tenants following mortgage foreclosure or contract for deed cancellation. *See* discussion, *supra*, at [III.B.1.e.](#)
- Local ordinances. *See* discussion, *supra*, at [III.B.1.f.](#)
- Termination notice required by the lease. *See* discussion, *supra*, at [III.B.1.c.](#)

Notices without cause (like a standard month-to-month termination notice) could not predate October 12, 2021.

3. Nonpayment of Rent Claims

a. Notices

The eviction transition law rent notice requirement ended for residential and commercial landlords. Other notice requirements under federal, state, and local laws and the lease might apply to nonpayment of rent claims:

- CARES Act Covered Properties. *See* discussion, *supra*, at [I.B.](#)
- Manufactured (mobile) home park lot tenancies. *See* discussion, *supra*, at [III.B.1.d.](#)
- Local ordinances. *See* discussion, *supra*, at [III.B.1.f.](#)
- Termination notice required by the lease. *See* discussion, *supra*, at [III.B.1.c.](#)

b. Remaining Restriction on Nonpayment of Rent Claims Against Tenants with a Pending State Emergency Rental Assistance Application

Residential landlords can terminate or not renew leases for file eviction court cases for any reason allowed by law except landlords cannot file eviction actions for nonpayment of rent against tenants with pending state emergency rental assistance application. *See* discussion, *supra*, at [VII.1.5.c.1](#).

c. Defenses

Defenses can include pending state emergency rental assistance application, improper notice, habitability, utilities, late fees, waiver, vulnerable adults, domestic violence, retaliation, and redemption. *See* discussion, *supra*, at [VII.1.5.c.1](#) and [VII.1.5.d.](#), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.E.](#), and [Answer Form Aiv3](#).

4. Notice and Holding Over Claims

Residential landlords can terminate or not renew leases for file eviction court cases for any reason allowed by law except landlords cannot file eviction actions for nonpayment of rent against tenants with pending state emergency rental assistance application.

There are notice requirements under federal, state, and local laws and the lease might apply:

- CARES Act Covered Properties. *See* discussion, *supra*, at [I.B.](#)
- Manufactured (mobile) home park lot tenancies. *See* discussion, *supra*, at [III.B.1.d.](#)
- Tenants following mortgage foreclosure or contract for deed cancellation. *See* discussion, *supra*, at [III.B.1.e.](#)
- Local ordinances. *See* discussion, *supra*, at [III.B.1.f.](#)
- Termination notice required by the lease. *See* discussion, *supra*, at [III.B.1.c.](#)

Notices without cause (like a standard month-to-month termination notice) could not predate October 12, 2021.

Defenses include improper notice, failure to attach notice, retaliation, waiver, and discrimination. *See* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.](#) and [Answer Form Aiv3](#).

4a. Retaliation for participating in RenthelpMN

If the tenant applied for RenthelpMN and the landlord discussed with the tenant dissatisfaction with waiting during the period 90 days before issuance of a no-cause termination notice, the notice would be presumptively retaliatory under Minn. Stat. § 504B.285 for the tenant

enforcing the right to not be evicted with a pending application for emergency rental assistance. If the landlord tries to rebut the presumption by claiming the real reason is the rent the tenant owes, that reason would violate the prohibition on not evicting tenants with pending applications for emergency rental assistance.

For more information on retaliation under statute, *see* [Minn. Stat. § 504B.285](#), and under common law, *see* *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019). *See generally* Residential Eviction Defense and Tenant Claims in Minnesota at [VI.F.3](#) and [VI.F.3a](#).

## 5. Breach of Lease Claims

There are notice requirements under federal, state, and local laws and the lease might apply:

- CARES Act Covered Properties. *See* discussion, *supra*, at [I.B.](#)
- Manufactured (mobile) home park lot tenancies. *See* discussion, *supra*, at [III.B.1.d.](#)
- Tenants following mortgage foreclosure or contract for deed cancellation. *See* discussion, *supra*, at [III.B.1.e.](#)
- Local ordinances. *See* discussion, *supra*, at [III.B.1.f.](#)
- Termination notice required by the lease. *See* discussion, *supra*, at [III.B.1.c.](#)

Landlords claiming breach of the lease still must prove a material violation of the lease under Minnesota court decisions. *See* discussion, *supra*, at [VII.J.1.](#) and Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.19](#).

Defenses can include improper notice, failure to attach lease, breach was not material, did not receive lease, lack of right of reentry clause, waiver, discrimination, disability, Minn. Stat. § 504B.171 defenses, police call penalty, domestic violence, equitable relief from forfeiture, and retaliation. *See* discussion, *supra*, at [VI.E.](#), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.G.](#), and [Answer Form Aiv3](#).

## 6. Service, Precondition, and Procedural Issues

- Service: *See* discussion, *supra*, at [IV.B.](#), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.C.](#), and [Answer Form Aiv3](#).
- Preconditions: *See* discussion, *supra*, at [IV.C.](#), Residential Eviction Defense and Tenant Claims in Minnesota at [VI.D.](#), and [Answer Form Aiv3](#).
- Procedure: *See* discussion, *supra*, at [IV.C1.](#), Residential Eviction Defense and Tenant Claims in Minnesota at [V.](#), and [Answer Form Aiv3](#).

## 7. Answer Form

See [Answer Form Aiv3](#).

M. Remedies and Requests for Relief

There is a detailed discussion of remedies and relief in Residential Eviction Defense and Tenant Claims in Minnesota at [VII](#).

N. Answer Forms

1. Poverty Law Answer Form No. A1v1 applies to eviction actions under [Emergency Executive Order 20-79](#).

2. Answer Form No. A1v2 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) through October 12, 2021.

3. Answer Form No. A1v3 applies to eviction actions under [Minnesota Session Laws 2021, 1st Special Session, Chapter 8, H. F. No. 4, Article 5](#) after October 12, 2021 through June 1, 2022.

*See Pandemic Eviction and Other Housing Laws and Rules*

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

O. Post-Trial Issues

There is a detailed discussion of post-trial issues in Residential Eviction Defense and Tenant Claims in Minnesota at [VIII](#).

P. Judge Review of Referee Decisions

There is a detailed discussion of judge review of referee decision in Residential Eviction Defense and Tenant Claims in Minnesota at [IX](#).

Q. Appeal and Writ of Prohibition

There is a detailed discussion in Residential Eviction Defense and Tenant Claims in Minnesota at [X](#) and [XI](#).

CHAPTER VIII: OTHER LANDLORD AND TENANT ACTIONS AND CLAIMS UNDER PANDEMIC EXECUTIVE ORDERS AND LAWS

A. Tenant Initiated Actions and Claims

There is a detailed discussion in Residential Eviction Defense and Tenant Claims in

Minnesota at [XII.B.](#)

1. Tenants Walking Away from or Ending Leases or Limiting Rent Liability

Executive Orders [24-14](#), [20-73](#), and [20-79](#), the [CARES Act § 4024](#), and [CDC Eviction Suspension Order](#) do not authorize tenants to break leases and limit rent liability. There are limited bases for breaking a lease.

a. Death of Tenant

See [Minn. Stat. § 504B.265](#).

b. Domestic Violence

See [Minn. Stat. § 504B.206](#); Residential Eviction Defense and Tenant Claims in Minnesota at [XII.B.5.b1](#).

c. Constructive Eviction: Housing Uninhabitable or Unfit for Occupancy

See [Minn. Stat. § 504B.131](#); Residential Eviction Defense and Tenant Claims in Minnesota at [XII.B.3.d](#).

d. Privacy Violations

See [Minn. Stat. § 504B.211](#); Residential Eviction Defense and Tenant Claims in Minnesota at [XII.B.2](#).

e. Frustration of Purpose and Impossibility or Impracticability of Performance

The common law principles of frustration of purpose and impossibility might allow tenants who have lost income to break leases. A landlord should consider whether it is better to require a tenant who cannot pay to stay or seek a tenant who can.

(1) Frustration of Purpose

In Minnesota, there are three conditions which must be met before the defense of frustration applies: (1) the party's principal purpose in making the contract is frustrated, (2) without that party's fault, and (3) by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made. Frustration does not mean that the purpose of the contract has become impossible, but rather the purpose must be substantially frustrated. *City of Savage v. Formanek*, 459 N.W.2d 173, 176 (Minn. Ct. App. 1990).

The claim was successful in *City of Savage v. Formanek*, 459 N.W.2d 173, 176 (Minn. Ct. App. 1990). The City of Savage started planning an industrial development project that included 20 acres owned by the landowners. The project area was under the authority of the Army Corps of Engineers. The city received notice from the Corps that the project was authorized. To assure that the special assessments would be paid to cover the expense of the project, the city and the landowners entered into assessment agreements. The city received notice that the Corps was taking discretionary authority of the project, which effectively halted any development. The landowners could not find parties interested in purchasing their property or developing it because of the permit requirement. The landowners refused to make any further assessment payments, and the city filed an action claiming breach of the assessment agreement. The trial court found the agreement void, and the Court of Appeals affirmed. The court held that the parties' understanding that all necessary permits were received and that no further permitting could be required was a mistaken belief at the time of the contract. The non-occurrence of the Corps taking discretionary authority of the project was a basic assumption on which the contract was made.

Other Minnesota decisions ruled against it. *J.J. Brooksbank Co., Inc. v. Budget Rent-A-Car Corp.*, 337 N.W.2d 372 (Minn. 1983) (defense denied); *National Recruiters, Inc. v. Toro Co.*, 343 N.W.2d 704 (Minn. Ct. App. 1984) (defense denied); *Little Can. Charity Bingo Hall Ass'n v. Movers Warehouse*, 498 N.W.2d 22 (Minn. Ct. App. 1993) (defense denied); *Dupuis v. GATR of Sauk Rapids, Inc.*, No. A17-1782, 2018 Minn. App. Unpub. LEXIS 644 \*; 2018 WL 3614320 (Minn. Ct. App. July 30, 2018) (unpublished) (defense denied); *Nicholson v. Univ. of Minn. Fed. Credit Union*, No. A06-652, 2007 Minn. App. Unpub. LEXIS 142 \*; 2007 WL 331321 (Minn. Ct. App. Feb. 6, 2007) (unpublished) (defense denied).

There are couple of decisions interpreting the defense during the pandemic. Both involve commercial tenancies. In [\*1800 Baxter County Road LLC v. Portillo's Hot Dogs, LLC, No., 62-CV-20-3818, Order & Memorandum \(Minn. Dist. Ct. 2nd Dist. Mar. 30, 2021\) \(Judge Gilligan\) \(Appendix PED-37\)\*](#), the restaurant-tenant-defendant entered into a lease for the former landlord in April 2018 before during the pandemic. On April 17, 2020 after the Governor declared the peacetime emergency in [\*Emergency Executive Order 20-01\*](#), the parties executed a new lease providing for some rent abatement. On April 24, 2020, the plaintiff bought the property from the former landlord and accepted assignment of the lease. After the defendant failed to pay rent in June 2020, the plaintiff sued. Order & Memorandum at 1-2.

First, it applied the force majeure clause in the lease, making the impossibility and impracticability defenses not available to the defendant. *Id.* at 3-5. Second, it analyzed the frustration of purpose defense. It noted, finding a force majeure clause does not preclude frustration of purpose defense, citing *Rembrandt Enterprises, Inc. v. Dahmes Stainless, Inc.*, 2017 WL 3929308 (N.D. Iowa Sept. 7, 2017) (applying Minnesota law). The court reviewed the caselaw on frustration of purpose.

The frustration of purpose defense requires: “1. The party’s principal purpose in making

the contract is frustrated; 2. without that party's fault; 3. by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made.” *City of Savage v. Formanek*, 459 N.W.2d 173, 176 (Minn. App. 1990). A principal purpose is “so completely the basis of the contract that, as both parties understand, without it the transaction would make little sense.” *Id.* (citation omitted). Frustration does not rise to the level of impossibility. *Formanek*, 459 N.W.2d at 177. “It is not enough that the transaction has become less profitable for the affected party. The frustration must be so severe that it is not fairly to be regarded as within the risks assumed under the contract.” *Id.* at 176 (cleaned up). Frustration of purpose is not available where parties are aware of the frustrating event when the contract is executed. *See Lounsbury v. City of Savage*, 1998 WL 426555, at \*3 (Minn. Ct. App. 1998).

Order & Memorandum at 7-8.

The court concluded:

This court concludes the principal purpose of the Lease is to provide premises for a restaurant offering indoor, drive-through, and take-out services. Two out of the three services were not restricted by the Executive Orders, therefore the purpose of the Lease was not substantially frustrated. The first element of the defense is not met.

Additionally, Portillo’s argument fails on the third element of the frustration of purpose defense. Portillo’s signed the Estoppel Certificate, effective on April 20, 2020, recognizing “the Lease is unmodified and in full force and effect,” in the middle of the Executive Orders’ effect. Portillo’s cannot now claim its purpose was frustrated by circumstances of the COVID-19 pandemic because it expressly agreed to be bound during the pandemic. It is illogical for Portillo’s to argue the impacts of the pandemic or Executive Orders were not fairly within its contemplation for a certificate it signed, which incorporated the Lease, during the pandemic.

*Id.* at 9.

A decision during the pandemic from Massachusetts excused the commercial tenant's rent payment obligation during the restaurant-shutdown period. [\*UMNV 205–207 Newbury, LLC v. Caffé Nero Americas, Inc.\*, No. 2084CV01493-BLS2 \(Mass. Sup. Ct. Suffolk Cty Feb. 8, 2021\)](#). The parties entered into 15-year lease in 2017 before the pandemic. On March 24, 2020, the defendant was barred from allowing any on-premises consumption of food or beverages, and instead could only offer food or beverages for take-out or delivery. When the defendant could not pay the rent, the plaintiff evicted the defendant and then sued for damages. *Id.* at 2-5. The court analyzed the frustration of purpose claim.

3.1. Applying the Frustration Doctrine. The undisputed facts establish that Caffé Nero’s continuing obligation to pay rent was discharged at least from March 24 to June 22, 2020,



because the entire purpose of the Lease was completely frustrated while the Governor's COVID-19 orders barred restaurants from serving customers indoors. As a result, (I) UMNV's written notices asserting that Caffé Nero had breached the Lease by not paying the April 2020 rent and was in default for still not making that rent payment within five days after the first notice were both wrong, (ii) Caffé Nero was not in default under the Lease as of May 19, 2020, and (iii) UMNV's purported termination of the Lease on May 19, 2020, was invalid.

The summary judgment record establishes that all the elements of frustration of purpose were present in this case.

The main object or purpose of this contract is not in dispute. The Lease provides that Caffé Nero could use the leased premises only to operate a café with a sitdown restaurant menu "and for no other purpose." The entire purpose of the Lease was for Caffé Nero to use space inside the basement or walk-down level of UMNV's building to serve high quality coffee, other drinks, and food to customers who could sit and consume them on the premises.

It is also undisputed that this purpose was destroyed or frustrated while the Governor's COVID-19 orders barred Caffé Nero from allowing customers to consume food or drink inside the leased premises.

Since the Lease limited the permissible use of the leased space to a single purpose, it cannot be disputed that Caffé Nero's continued ability to operate a café at the leased premises, and the absence of government orders barring all restaurants from serving customers inside, was a basic assumption underlying the Lease. And there is no evidence that the risk of a global viral pandemic coming to Massachusetts and leading to a government order shutting down the entire restaurant industry was something the parties contemplated when they entered into the Lease. Indeed, UMNV implicitly concedes the point.

If UMNV had allowed Caffé Nero to use the leased premises for other purposes not barred by government order, then the fact that Caffé Nero's intended use was frustrated might not have discharged its obligation to pay rent. Cf. *Karaa v. Kuk Yim*, 86 Mass. App. Ct. 714, 717–718 & n.9 (2014) (no frustration of purpose where defendant leased home with intent to send children to school in Belmont, family could not get visas and thus could not reenter the United States, and defendant knew of and voluntarily assumed that risk). But where, as here, government action bars the only permitted or possible use of the leased property, and there is no evidence that the lessor voluntarily assumed that risk, then "the use of the leased property intended by the parties is frustrated." Restatement (Second) of Property, Land. & Ten. § 9.3 (1977); accord *R & F Fin. Servs.*, *supra*, 2021 WL 99733, at \*4–\*5.

Memorandum and Order at 7-8. The court concluded that the force majeure clause did not bar the frustration of purpose defense. *Id.* at 8-10.

The principles that can be drawn from these decisions that the frustration of purpose claim might be available for tenants who entered leases before the pandemic and lost income during the pandemic, regardless of whether the lease contains a force majeure clause that is uncommon in residential leases.

## (2) Impossibility or Impracticability of Performance

In *Burgi v. Eckes*, 354 N.W.2d 514 (Minn. Ct. App. 1984), after a bankruptcy the commercial tenant still had a lease but was effectively paying only 25% of the pre-bankruptcy rent. The city ordered the landlord to do \$50,000 worth of repairs or allow the city to raze the building. Lacking money, the landlord allowed the razing and the tenant sued. The trial court held that the landlord had the right to break the lease based on impossibility or impracticability of performance. The Court of Appeals affirmed writing:

The trial court also found, however, that respondent's duty to make major or structural repairs was suspended because of economic impossibility. We agree. The rent respondent received under the lease was barely enough to pay taxes, insurance, and utilities, and the rest of the building was empty. Any money to pay for major repairs to the building had to come out of payments appellants made under the sales agreement. When, through no fault of the landlord, those payments were diminished to less than one-fourth of the agreed amount, repairing the building became so economically disadvantageous as to be an economic impossibility. See *Powers v. Siats*, 244 Minn. 515, 520, 70 N.W.2d 344, 348 (1955). *Powers* held that, except where impossibility or impracticability of performance is wholly attributable to the subjective inability of the promisor, the performance of a contractual duty may be excused when, due to the existence of a fact or circumstance of which the promisor neither knew nor had reason to know, performance becomes impracticable in the sense that it would cast an excessive or unreasonably burdensome expense upon the promisor. Respondent-landlord Eckes, the promisor, did not cause his own reduction in income, and there was no reason, at the outset of the contract, for him to anticipate that the return on the sale of his business would be reduced by more than three quarters. Requiring respondent now to make the major repairs the building required to avoid destruction would cast an unreasonably burdensome expense on respondent which was totally unanticipated at the time of contracting.

*Id.* at 518.

The *Powers* Court listed several standards in determining application of impossibility or impracticability of performance.

Accordingly, the term 'impossibility' is not limited to a scientific or actual impossibility

of performance. Except where a contrary intent is manifest, and except where the impossibility or impracticability of performance is wholly attributable to the subjective inability of the promisor, performance of a contractual duty may be excused when, due to the existence of a fact or circumstance of which the promisor at the time of the making of the contract neither knew nor had reason to know, performance becomes impossible, or becomes impracticable in the sense that performance would cast upon the promisor an excessive or unreasonably burdensome hardship, loss, expense, or injury. The distinction between objective and subjective impossibility is not to be overlooked.

2. Realistically, when the court is confronted with a situation involving such impossibility of performance, the problem becomes one of allocating between the parties the burden of unreasonably excessive risks which the parties have encountered but which they did not, at the time the contract was made, foresee or provide for and by reason of which a greatly increased burden is placed upon the promisor at the time of performance. This court, when such conditions have been found to exist, has relieved a party from the duty of performance. A mere difficulty of performance does not ordinarily excuse the promisor, but where a great increase in expense or difficulty is caused by a circumstance not only unanticipated but inconsistent with the facts which the parties obviously assumed as likely to continue, the basic reason for excusing the promisor from liability may be present.

....

A promisor who, after having assumed a contractual duty without then knowing or having reason to know of a fact which makes performance impossible or impracticable, subsequently acquires knowledge of such fact in time to avoid the dire consequences of nonperformance, but who despite such knowledge proceeds without taking reasonably prudent steps to avoid such consequences, cannot thereafter be heard to assert the defense of impossibility of performance. This equitable rule, which applies here, is sometimes referred to as an assumption of risk. Corbin, Contracts, ss 1328, 1329. An absolute assumption of risk may arise by contract or by conduct of the promisor which precludes a denial of that assumption.

*Id.* at 520-22.

In [1800 Baxter County Road LLC v. Portillo's Hot Dogs, LLC, No., 62-CV-20-3818, Order & Memorandum \(Minn. Dist. Ct. 2nd Dist. Mar. 30, 2021\) \(Judge Gilligan\) \(Appendix PED-37\)](#), the restaurant-tenant-defendant entered into a lease for the former landlord in April 2018 before during the pandemic. On April 17, 2020 after the Governor declared the peacetime emergency in [Emergency Executive Order 20-01](#), the parties executed a new lease providing for some rent abatement. On April 24, 2020, the plaintiff bought the property from the former landlord and accepted assignment of the lease. After the defendant failed to pay rent in June 2020, the plaintiff sued. Order & Memorandum at 1-2. The court applied the force majeure

clause in the lease, making the impossibility and impracticability defenses not available to the defendant. *Id.* at 3-5.

## 2. Landlord Activities under Safe Reopening Order

Under [Emergency Executive Order 20-74 \(June 5, 2020\)](#), all work must be conducted in a manner that adheres to Minnesota OSHA Standards and MDH and CDC Guidelines, including social distancing and hygiene practices. Businesses choosing to open or remain open must establish and implement a COVID-19 Preparedness Plan. Each Plan must provide for the business's implementation of guidance for their specific industry or, if there is no specific guidance, general guidance for all businesses, as well as Minnesota OSHA Standards and MDH and CDC Guidelines in their workplaces.

Under [Emergency Executive Order 20-81 \(July 22, 2020\)](#), Minnesotans must wear a face covering in indoor businesses and indoor public settings, with limited exceptions. [https://mn.gov/governor/assets/EO%2020-81%20Final%20Filed\\_tcm1055-441323.pdf](https://mn.gov/governor/assets/EO%2020-81%20Final%20Filed_tcm1055-441323.pdf)

## 3. Maintenance

### a. Actions and Remedies

The landlord is obligated to maintain the property. The landlord should follow social distance and hygiene guidance.

Tenants can ask landlords for repairs can contact city housing inspection agencies, and file rent escrow, emergency tenant remedies, and tenant remedies actions. *See* Residential Eviction Defense and Tenant Claims in Minnesota at [XII.B.3](#).

### b. Emergency Tenant Remedies Action

The emergency tenant remedies action is governed by Minn. Stat. §§ 504B.381 and 504B.425. *See* Residential Eviction Defense and Tenant Claims in Minnesota XII.B.3.b. [http://povertylaw.homestead.com/files/Reading/Residential Eviction Defense in Minnesota.htm#TOC1\\_497](http://povertylaw.homestead.com/files/Reading/Residential_Eviction_Defense_in_Minnesota.htm#TOC1_497); Emergency Tenant Remedies Actions and Lockout Actions <http://povertylaw.homestead.com/EmergencyReliefandLockoutActions.html>

In [Smith v. Temple Corp, Inc., No. 69DU-CV-20-1845 \(Minn. Dist. Ct. 6th Dist. Jan. 20, 2021\) \(Referee Schulte\) \(Appendix PED-34\)](#), a number of tenants filed an emergency tenant remedies action over a failed heating system. The City of Duluth condemned the property and the landlord provided interim accommodations. In response to the landlord's motion to dismiss, the court concluded that (1) loss of heat was appropriate grounds for the emergency tenant remedies action, (2) whether the plaintiffs were tenants and whether they caused disrepair were fact issues, (3) the defendants could not counterclaim for eviction in an emergency tenant remedies action,

(4) the defendants could file eviction actions subject to the limitations of [Emergency Executive Order 20-79](#), (5) the court cannot order money judgments to the defendants in an emergency tenant remedies action, (6) plaintiffs shall continue to pay rent into court apart from any rent owed by the Section 8 Voucher Program, (7) the defendants shall continue to provide safe and habitable housing, (8) the plaintiffs shall apply for available relief funds, (9) the defendants shall continue to repair the heating system, (10) the defendants shall allow the plaintiffs access to the property to retrieve personal property, (11) *Fritz v. Warthen*, 213 N.W.2d 339 (1973) and its discussion of payment of rent into court in eviction actions does not apply, and (12) the plaintiffs shall search for housing if they do not intend to return and the defendants will provide financial assistance as needed.

Earlier, in [Smith v. Temple Corp, Inc., No. 69DU-CV-20-1845 \(Minn. Dist. Ct. 6th Dist. Jan. 5, 2021\) \(Referee Schulte\) \(Appendix PED-34a\)](#), the court ordered the landlord to provide hotel accommodations, provide access to the property for tenants who want to move their belongings to storage, provide transportation accommodations of gas cards and bus passes, and provide food accommodations.

Subsequently, in [Smith v. Temple Corp, Inc., No. 69DU-CV-20-1845 \(Minn. Dist. Ct. 6th Dist. Mar. 3, 2021\) \(Referee Schulte\) \(Appendix PED-34b\)](#), the court denied the landlord's motion to certify questions to the Minnesota Court of Appeals, found that certain plaintiffs were residential tenants under [Minn. Stat. § 504B.001, Subd. 12](#), ordered the landlord to continue to provide the tenants with safe lodging until such time as the heat at the property is operable and they can legally occupy the property and ordered that in light of some tenants' failure to pay any rents into escrow, the landlord were not obligated at this time to provide extras such as gas cards, bus passes and food stipends. Order at 2. On the issue of whether certain plaintiffs were residential tenants, the court noted that one plaintiff had a signed lease regardless of the landlord's claim of an unauthorized occupant, and two plaintiffs did not have a written leases but agreed to work for the landlord and did not pay rent.

In [State v. Mostad, No. 58-CV-20-175 \(Minn. Dist. Ct. 10th Dist. April 6, 2020\) \(Appendix PED-20\)](#), the court enjoined the landlord interrupting utility service to the tenant, in violation of [Emergency Executive Order 20-14](#), concluding that the Attorney General had the power to enforce it. Subsequently, in [State v. Mostad, No. 58-CV-20-175 \(Minn. Dist. Ct. 10th Dist. Mar. 15, 2021\) \(Appendix PED-20a\)](#), the court found that the landlord disconnected electricity on April 2, 2020, the Attorney General contacted the landlord on April 3 and filed this action that say day under [Minn. Stat. § 504B.381](#) (emergency tenant remedies action), and the landlord restored service on April 4. Amended Findings of Fact, Conclusions of Law, and Order at 2-3. The court concluded that the Attorney General had standing to bring the action, the landlord violated [Emergency Executive Order 20-14](#), the Attorney General did not have standing to seek damages under [Minn. Stat. § 504B.221](#) for interruption of utilities, the Attorney General did have standing to enforce health, housing and building maintenance codes under [Minn. Stat. § 504B.381](#) (emergency tenant remedies action) but the Attorney General did not satisfy the statutory prefiling notice, Attorney General enforcement of [Emergency Executive Order 20-14](#)

was not an unlawful taking under the United States and Minnesota Constitutions, and a \$25,000 penalty was not warranted.

In [\\_\\_\\_\\_\\_ v. Yimer, No. 27-CV-HC-20-1460 \(Minn. Dist. Ct. 4th Dist. Aug. 11, 2020\) \(Referee Sedillos\) \(Appendix PED-40\)](#), the tenant filed an emergency tenant remedies action claiming failure to repair the air conditioner. After ordering the landlord to repair the air conditioner, the landlord complied, and the court considered rent abatement at the hearing. The landlord claimed unpaid rent and failed a separate eviction action with the court concluding the landlord's claim was outside the scope of the emergency tenant remedies action. The court found that the lack of air conditioning caused the tenant with asthma to sleep outside for 10 days. The court awarded 100% rent abatement for the 10 days and 20% for the remaining days of the month, for a total of \$227.

In [\\_\\_\\_\\_\\_ v. Belmore, No. 27-CV-HC-20-1584 \(Minn. Dist. Ct. 4th Dist. Sep. 10, 2020\) \(Referee Sedillos\) \(Appendix PED-50\)](#), the tenant was forced to move out of the apartment due to mold. The landlord agreed to pay for a week of a hotel stay but conditioned paying for a few more days if she agreed to vacate the property. The tenant filed an emergency tenant remedies action. After an evidentiary hearing, the court order the landlord to repair the property and to continue to pay the hotel bills and scheduled another hearing to consider damages.

c. Rent Escrow Action

The rent escrow action is governed by Minn. Stat. §§ 504B.385 and 504B.425. *See* Residential Eviction Defense and Tenant Claims in Minnesota [XII.B.3.a.](#)

In [\\_\\_\\_\\_\\_ v. Rick Bergman Properties, Inc., No. 27-CV-HC-20-1456 \(Minn. Dist. Ct. 4th Dist. Sep. 14, 2020\) \(Referee Sedillos\) \(Appendix PED-39\)](#), the tenant filed a rent escrow action against the landlord, claiming mold and lack of a required municipal rental license. The court found that the tenant gave the proper 14-day notice of violations, the tenant had asthma affected by mold, the mold inspector found mold in the bathroom and carpet, and the property was and had been unlicensed. The court awarded 100% retroactive rent abatement of \$5,810 based on the mold and lack of license, citing *Dahl v. R.J. Reynolds Tobacco Co.*, 742 N.W.2d 186 (Minn. Ct. App. 2007) (unjust enrichment) and *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sept. 4, 2007) (unpublished), \$500 in attorney's fees, and \$205.50 in costs. After a credit of rent paid into court of \$2,490, the court ordered the landlord to pay the tenant \$3,525.50 in 30 days, complete repairs in 30 days with rent abatement continuing until completion of repairs, and pay attorney's fees to the tenant's attorney in 30 days.

In [\\_\\_\\_\\_\\_ v. Assertive MPLS Properties, LLC, et al., No. 27-CV-HC-20-1514 \(Minn. Dist. Ct. 4th Dist. Oct. 13, 2020\) \(Referee Houghtaling\) \(Appendix PED-41\)](#), the tenant filed a rent escrow action claiming several property maintenance violations cited in city inspection orders. The court found that problems with exterior door thresholds, mouse infestation, refrigerator, and stove, and the landlord's lack of responsiveness impaired the tenant's use of the property. The

court awarded \$2,200 in rent abatement and along with returning \$500 that the tenant paid into court to the tenant, ordered the landlord to pay \$1,700 to the tenant in 10 days, and order the landlord to complete repairs with rent abatement continuing until completion.

In [\*v. Golden Mile Management LLC\*, No. 27-CV-HC-20-1586 \(Minn. Dist. Ct. 4th Dist. Oct. 29, 2020\) \(Referee Sedillos\) \(Appendix PED-44\)](#), the tenant filed a rent escrow action claiming problems with the condition of the property. The court found that the tenant and her aunt credibly testified about flooding, mold, and resulting property damage, and an inspector and contractor credibly testified about the conditions and mold removal. The court rejected the landlord's claims that he was responsive to the tenant and that the property was not tenable under the lease. The court awarded rent abatement at 75% for 19 months totaling \$12,150 and continuing rent abate, ordered the landlord to pay rent abatement in 30 days, ordered repairs in less than a month, and scheduled a compliance hearing.

d. Tenant Remedies Action

The tenant remedies action is governed by Minn. Stat. §§ 504B.395-504B.471. *See* Residential Eviction Defense and Tenant Claims in Minnesota [XII.B.3.c.](#)

In [\*v. Distinguished Prop., LLC\*, No. 27-CV-HC-21-118 \(Minn. Dist. Ct. 4th Dist. June 9, 2121\) \(Referee Houghtaling\) \(Appendix PED-57a\)](#), the parties settled a tenant remedies action in which the tenants would vacate the property and the landlord would pay \$1,000 to the tenants and an additional \$3,000 after the tenants vacated the property, removed personal property, and returned keys. The landlord refused to make the second payment claiming that the tenants left personal property and did not return keys. The court found that the tenants substantially complied with the agreement by vacating and leaving keys, and that leaving a few personal items was not a material breach. The court ordered the landlord to make the payment within 10 days.

e. Damages Action

Damages actions are based on Minn. Stat. § 504.18, now § 504B.161, as interpreted by the Minnesota Supreme Court in *Fritz v. Warthen*, 298 Minn. 48, 213 N.W.2d 339 (1973). *See* Residential Eviction Defense and Tenant Claims in Minnesota at [XII.B.3.e.](#)

In [\*v. Johnson\*, No. 27-CV-20-1622 \(Minn. Dist. Ct. 4th Dist. Sep. 25, 2020\) \(Judge Fraser\) \(Appendix PED-52\)](#), the former tenant sued the former landlord for damages for failure to obtain a rental license. The court granted the plaintiff's motion for partial summary judgment, concluding (1) the tenant was entitled to \$37,808 in rent paid, (2) the statute of limitations [Minn. Stat. § 541.05](#) limited damages to six years before filing the action, (3) the tenant was entitled to relief under the Prevention of Consumer Fraud Act, Minn. Stat. §§ [325F.69, subd. 1](#) and [8.31, subd. 3a](#), and claims of fraud, fraud in the inducement, and unjust enrichment. The court also ordered the landlord to comply with discovery requests.



#### 4. Lockouts

Lockout remedies are governed by Minn. Stat. § 504B.101 (formerly § 504.01) (prohibition of self-help eviction, also called distress for rent), § 504.281 (formerly § 566.01) (prohibition of forcible entry), § 504B.225 (formerly § 504.25) and 609.606 (crime), § 504B.375 (formerly § 566.175) (action), § 504B.231 (formerly § 504.255) (damages, penalty, and attorney's fees), and § 557.08 and § 557.09 (damages and penalties). See Residential Eviction Defense and Tenant Claims in Minnesota at [XII.B.1](#).

In [v. Krey Construction, LLC, No. 27-CV-HC-20-1527 \(Minn. Dist. Ct. 4th Dist. Aug. 11, 2020\) \(Referee Sedillos\) \(Appendix PED-43\)](#), the tenant filed a lockout action, claiming that landlord changed the locks in July 2020. The landlord claimed she had abandoned the property but the court found that the tenant credibly testified that she lived on the property and did not intend to abandon it. The court ordered the landlord to allow the tenant to move back to the property, ordered the sheriff to enforce the order if needed, and scheduled a hearing on the landlord's claim of abandonment and damages.

In [v. Bartelt and New Spirit Homes, Inc., No. 27-CV-HC-20-1524 \(Minn. Dist. Ct. 4th Dist. Aug. 11, 2020\) \(Referee Houghtaling\) \(Appendix PED-49\)](#), the court found that the landlords actually or constructively removed or excluded the tenant from the property by changing the access code to the door. The court ordered the landlords to immediately stop the unlawful actions and ordered sheriff enforcement of the order if the landlords did not comply. The court scheduled a trial and ordered discovery, noting the availability of treble damages, penalties, and attorney's fees under Minn. Stat. §§ [504B.231](#) and [504B.271](#).

In [v. LMC NE Minneapolis Holdings LLC, No. 27-CV-HC-21-227 \(Minn. Dist. Ct. 4th Dist. May 6, 2021\) \(Referee Houghtaling\) \(Appendix PED-56\)](#), the defendant landlords disabled the key fob that excluded the plaintiff from the property. The plaintiff filed a lockout action and defendants argued that she was not a tenant. The court found that the plaintiff was a tenant under [Minn. Stat. § 504B.001, Subd. 12](#), noting (1) the defendants signed a lease with the plaintiff's former roommate and partner, (2) the plaintiff was the victim of an abusive relationship with the former roommate, (3) the plaintiff credibly testified that she paid rent to the former roommate, (4) while the defendants' manager testified she did not know of the plaintiff, documents showed that she did, (5) the plaintiff used the property address on her driver's license, (6) the plaintiff received mail at the property, (7) the defendants' would have sorted mail, received packages, and seen the plaintiff on the property for two years, and (8) disabling the key fob had the same effect as changing the locks. The court concluded that the defendants actually or constructively excluded the plaintiff from the property by changing the key fob. The court ordered the defendants to enable the key fob and to pay the plaintiff \$500 under [Minn. Stat. § 504B.231](#), \$200 in costs under [Minn. Stat. § 549.02](#), and attorney's fees under [Minn. Stat. § 504B.271](#).

In [v. People Serving People Charities, Inc., No. 27-CV-HC-21-267 \(Minn. Dist.](#)



[Ct. 4th Dist. Aug. 5, 2021](#)) ([Referee Houghtaling](#)) ([Appendix PED-62](#)), the plaintiff filed a lockout action against a shelter owner after the shelter excluded her for three days. The court denied the defendant's motion for summary judgment, concluding that the property was a residential building under [Minn. Stat. § 504B.001, Subd. 11](#), the plaintiff was a residential tenant because the shelter policy stated that she had to contribute income to her shelter needs, and that the defendant was a landlord.

## 5. Showing Apartments

It is unclear whether landlords can require tenants to allow prospective renters to come into their units. Still, the landlord would not be able to evict the tenant for refusing unless it would fit the eviction suspension exceptions. The lack of an eviction remedy would give the tenant more power in the relationship. The parties could agree for the tenant creating a video showing of the apartment, or the landlord creating a video and cleaning afterward.

## B. Financial Assistance

Here are selected programs that offer financial assistance.

### 1. COVID-19 Emergency Rental Assistance

The Minnesota Housing Finance Agency (MHFA) emergency rental assistance program is called [COVID-19 Emergency Rental Assistance](#), which is operating under the banner of RentHelpMN.

Tenants apply online at <https://www.renthelpmn.org/>. The 211 helpline has dedicated multilingual staff available to answer questions about RentHelpMN, 8:00 a.m. – 8:00 p.m. Monday through Saturday.

RenthelpMN has information online.

- Information sessions: <http://youtu.be/2nTW9VQ7zWg>
- RentHelpMN Dashboard of Program Statistics: <https://www.mnhousing.gov/renthelpmn-dashboard>
- Program Updates: <https://www.renthelpmn.org/updates>
- [RentHelpMN COVID-19 Emergency Rental Assistance Program Guide](#)

RentHelpMN program announced it would begin accepting applications for vacated unit rent and utility assistance on October 15, 2021: [Updated Policies and Implementation: Minnesota Housing's RenthelpMN Vacated Unit Assistance](#).

The Housing Justice Center created a [slide show](#) on the program.

Applicants can appeal in writing by mail or by fax within 10 days. There is no specific form. A letter will do. State the following in the letter: (1) who you are; name, address, application ID # (if known), (2) why you were denied (if known), (3) why this denial was in error, and (4) why you should be eligible. Reapplying is another option. For assistance, contact the Housing Justice Center at (800) 403-0476.

## 2. The Zero Balance Project

The [Zero Balance Project](#) is a rental assistance in Dakota, Hennepin and Ramsey Counties, and Minneapolis and St Paul. In the Zero Balance Project, landlords start and lead the application on behalf of their renters.

## 3. Utilities

Tenants can include utilities except phone and internet when applying with [RenthelpMN](#). Tenants also can apply for financial assistance to pay for utilities with the [Minnesota Energy Assistance Program](#). [Citizens Utility Board \(CUB\) of Minnesota](#) provides utility rights information and advocacy.

## 4. Other Financial Assistance Programs

- Hennepin County Emergency Rental Assistance - <https://www.hennepin.us/rent-help>
- Neighborhood House - <http://neighb.org/>
- Ramsey County Economic Assistance - <https://www.ramseycounty.us/residents/assistance-support/assistance/financial-assistance/emergency-assistance>
- Anoka County - <https://www.anokacounty.us/2689/Basic-Needs>
- Minnesota Department of Human Services - <https://applymn.dhs.mn.gov/online-app-web/spring/public/process-login?execution=e1s1>
- United Way 211 - <http://www.211unitedway.org/> Call 211™ or 651-291-0211: State-wide list of community resources, like housing assistance, shelters, and food shelf locations
- State and Local Rental Assistance (National Low Income Housing Coalition - viewed April 9, 2021) - <https://nlihc.org/rental-assistance>

## C. Landlord Initiated Actions and Claims

1. In General

There is a detailed discussion in Residential Eviction Defense and Tenant Claims in Minnesota at [XII.C.](#)

2. Rent Increases and Price Gauging from March 21, 2020 until the July 1, 2021

[Emergency Executive Order 20-10](#) prohibited price gauging from March 21, 2020 until the July 1, 2021 effective date of the end of the peacetime emergency. [Emergency Executive Order 21-21](#). [Emergency Executive Order 20-10](#) provided:

1. Beginning March 21, 2020 at 5:00 pm, and continuing for the duration of the peacetime emergency declared in Executive Order 20-01 or until this Executive Order is rescinded, all persons are prohibited from selling, offering to sell, or causing to sell in this state any essential consumer goods or services for an amount that represents an unconscionably excessive price.

2. For purposes of this Executive Order, the following terms are defined as specified below.

a. “Person” or “persons” has the meaning in Minnesota Statutes 2019, section 325F.68, subdivision 3.

b. “Essential consumer goods or services” means goods or services vital and necessary for the health, safety, and welfare of the public, including without limitation: food, water, fuel, gasoline, housing, shelter, transportation, health care goods and services, pharmaceuticals, medical supplies, and personal hygiene, sanitation, and cleaning goods.

c. “Unconscionably excessive” means:

i. The amount charged represents a gross disparity between the price of the good or service and the price of the same good or service that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency declared by Executive Order 20-01 on March 13, 2020, unless the person demonstrates that the disparity is substantially attributable to significant additional costs outside the control of the person; or

ii. The amount charged for the good or service is more than twenty percent (20%) greater than the price of the same good or service that was sold or offered for sale in the usual course of business during the thirty (30) days immediately prior to the peacetime emergency declared by Executive Order 20-01 on March 13, 2020, unless the person demonstrates that the disparity is substantially attributable to significant additional costs outside the control of the person; or

iii. The amount charged grossly exceeds the price at which the same or similar good or service is readily obtainable by other purchasers in the trade area, unless the person demonstrates that the price increase is substantially attributable to significant additional costs outside the control of the person.

3. The Attorney General may investigate and bring an enforcement action to remediate and enjoin any alleged violation of this section. The authority of the Attorney General under this Executive Order includes but is not limited to the authority provided under [Minnesota Statutes 2019, section 8.31](#).

4. Pursuant to [Minnesota Statutes 2019, section 12.45](#), any person who is found to have violated this section is subject to a civil penalty of not more than \$10,000 per sale or transaction. The Attorney General may additionally seek any relief available pursuant to [Minnesota Statutes 2019, section 8.31](#).

Tenant might have a private right of action under [Minn. Stat. § 8.31, Subd. 3a](#).

#### CHAPTER IX: ADVOCACY

Continued advocacy is needed. Attorneys not funded by the Legal Services Corporation (LSC) can advocate for policies that protect tenants.

##### Minnesota Government:

- [Governor Tim Walz](#)
- [Attorney General Keith Ellison](#)
- [Minnesota Housing Commissioner Jennifer Ho](#)
- [Minnesota Department of Human Rights Commissioner Rebecca Lucero](#)
- [Minnesota Senators](#)
- [Minnesota House of Representatives](#)

##### Local Government:

- [County Commissioners](#)
- [City Mayors and City Councils](#)

##### Courts:

- [Minnesota Supreme Court](#)
- [District Courts](#)

##### United States:

- [President Elect Joe Biden](#)
- [Senate](#)
- [House of Representatives](#)
- [Centers for Disease Control and Prevention \(CDC\)](#)

- [Department of Housing and Urban Development \(HUD\)](#)

CASES APPENDIX

[Complete Appendix Link](#)

[\*Yimer v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-20-1408 \(Minn. Dist. Ct. 4th Dist. Sep. 10, 2020\) \(Referee Sedillos\) \(Appendix PED-1\)](#)

[\*Henry v. \\_\\_\\_\\_\\_\*, No. 33-CV-20-180 \(Minn. Dist. Ct. 10th Dist. Oct. 30, 2020\) \(Judge Hiljus\) \(Appendix PED-2\)](#)

[\*Benolken v. \\_\\_\\_\\_\\_\*, No. 62-HG-CV-20-624 \(Minn. Dist. Ct. 2nd Dist. Nov. 30, 2020\) \(Judge Nelson\) \(Appendix PED-3\)](#)

[\*Newcastle Lake LLC v. Carmichael\*, No. 2020-005609-CC-20 \(Fla. Cir. Ct. 11th Cir. Miami-Dade County Oct. 21, 2020\) \(Judge Murray\) \(Appendix PED-4\)](#)

[\*Dunnigan v. \\_\\_\\_\\_\\_\*, No. 19WS-CV-20-864 \(Minn. Dist. Ct. 1st Dist. Sep. 22, 2020\) \(Judge Lutz\) \(Appendix PED-5\)](#)

[\*Dunnigan v. \\_\\_\\_\\_\\_\*, No. 19WS-CV-20-864 \(Minn. Dist. Ct. 1st Dist. Dec. 4, 2020\) \(Judge Perzel\) \(Appendix PED-5a\)](#)

[\*BBS LLC v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-20-1412 \(Minn. Dist. Ct. 4th Dist. Dec. 2, 2020\) \(Referee Sedillos\) \(Appendix PED-6\)](#)

[\*Raintree Associates LLP v. \\_\\_\\_\\_\\_\*, No. 69VI-CV-20-413 \(Minn. Dist. Ct. 6th Dist. Dec. 1, 2020\) \(Judge Anderson\) \(Appendix PED-7\)](#)

[\*Aysta Properties, Inc. v. \\_\\_\\_\\_\\_\*, No. 69VI-CV-20-419 \(Minn. Dist. Ct. 6th Dist. Nov. 13, 2020\) \(Judge Friday\) \(Appendix PED-8\)](#)

[\*Aysta Properties, Inc. v. \\_\\_\\_\\_\\_\*, No. 69VI-CV-20-421 \(Minn. Dist. Ct. 6th Dist. Dec. 14, 2020\) \(Judge Peterson\) \(Appendix PED-9\)](#)

[\*Sela Group, LLC v. \\_\\_\\_\\_\\_\*, No. 27-CV-HC-20-1360 \(Minn. Dist. Ct. 4th Dist. July 14, 2020\) \(Referee Sedillos\) \(Appendix PED-10\)](#)

[\*Borsay v. \\_\\_\\_\\_\\_\*, No. 02-CV-20-4224 \(Minn. Dist. Ct. 10th Dist. Dec. 14, 2020\) \(Judge Logering\) \(Appendix PED-11\)](#)

[\*Munger Terrace, LLLP v. \\_\\_\\_\\_\\_\*, No. 69DU-CV-20-1348 \(Minn. Dist. Ct. 6th Dist. Sep. 29,](#)

2020) (Judge Neo) (Appendix PED-12)

Minnesota Parks, LLC v. \_\_\_\_\_, No. 31-CV-20-1686 (Minn. Dist. Ct. 9th Dist. Aug. 5, 2020) (Judge Chandler) (Appendix PED-13)

LKE Enterprises, LLC v. \_\_\_\_\_, No. 31-CV-20-2600 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) (Appendix PED-14)

Kluge v. \_\_\_\_\_, No. 31-CV-20-2602 (Minn. Dist. Ct. 9th Dist. Nov. 19, 2020) (Judge McBroom) (Appendix PED-15)

Kelley v. \_\_\_\_\_, No. 11-CV-19-2181 (Minn. Dist. Ct. 9th Dist. Oct. 29, 2020) (Judge Strandlie) (Appendix PED-16)

Olson Property Investments v. \_\_\_\_\_, No. A20-1073 (Minn. Ct. App. Sept. 1, 2020) (Appendix PED-17)

Administrative Order Declaring Certain Housing/eviction Matters Non-public (Minn. Dist. Ct. 4th Dist. Mar. 31, 2020) (Judge Miller) (Appendix PED-18)

Standing Order re 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01 (Minn. Dist. Ct. 4th Dist. July 22, 2020) (Judge Robiner) (Appendix PED-19)

Administrative Order Regarding the Resumption of Housing Court Operations (Minn. Dist. Ct. 2nd Dist. Aug. 19, 2020) (Judge Castro) (Appendix PED-19a)

State v. Mostad, No. 58-CV-20-175 (Minn. Dist. Ct. 10th Dist. April 6, 2020) (Appendix PED-20)

State v. Mostad, No. 58-CV-20-175 (Minn. Dist. Ct. 10th Dist. Mar. 15, 2021) (Appendix PED-20a)

Heights Apartments, LLC, and Walnut Trails, LLLP v. Walz, No. 20-CV-2051, 2020 WL 7828818, Order on Motion to Dismiss and Motion for Preliminary Injunction (D. Minn. Dec. 31, 2020) (Judge Brasel) (Appendix PED-21)

Letter from Evan Romanoff, Assistant Minnesota Attorney General to \_\_\_\_\_ at 2 (Nov. 18, 2020) (Appendix PED-22 - available from author)

Roggenkamp v. \_\_\_\_\_, No. 18-CV-21-95 (Minn. Dist. Ct. 9th Dist. Feb. 2, 2121) (Judge Middendorf) (Appendix PED-23)

*Vailwood, LLC v. \_\_\_\_\_*, No. 62-HG-CV-20-920 (Minn. Dist. Ct. 2nd Dist. Jan. 6, 2021) (Judge Nelson) (Appendix PED-24)

*Partners 388 LLC v. \_\_\_\_\_*, No. 75-CV-20-86 (Minn. Dist. Ct. 8th Dist. May 8, 2020) (Judge Glasrud) (Appendix PED-25)

*IH2 Property Illinois, L.P. v. \_\_\_\_\_*, No. No. 27-CV-HC-20-1438 (Minn. Dist. Ct. 4th Dist. July 28, 2020) (Referee Sedillos) (Appendix PED-26)

*Bard v. \_\_\_\_\_*, No. No. 02-CV-20-3913 (Minn. Dist. Ct. 10th Dist. Nov. 4, 2020) (Appendix PED-27)

*Bina v. \_\_\_\_\_*, No. 27-CV-HC-20-12615 (Minn. Dist. Ct. 4th Dist. Oct. 29, 2020) (Appendix PED-28)

*Park Real Estate Services v. \_\_\_\_\_*, No. 27-CV-HC- 21-15 (Minn. Dist. Ct. 4th Dist. Jan. 22, 2021) (Appendix PED-29)

*Duke v. \_\_\_\_\_*, No. 27-CV-HC-20-1742 (Minn. Dist. Ct. 4th Dist. Jan. 8, 2021) (Referee Sedillos) (Appendix PED-30)

*Little Earth of United Tribes Housing Corporation v. \_\_\_\_\_*, No. 27-CV-HC-20-1517 (Minn. Dist. Ct. 4th Dist. Sep. 15, 2020) (Referee Houghtaling) (Appendix PED-31)

*Grover v. \_\_\_\_\_*, No. 19WS-CV-20-998 (Minn. Dist. Ct. 1st Dist. Dec. 22, 2020) (Judge Perzel) (Appendix PED-32)

*Lofgren v. \_\_\_\_\_*, No. 04-CV-20-1069 (Minn. Dist. Ct. 9th Dist. April 21, 2020) (Judge Benshoof) (Appendix PED-33)

*Smith v. Temple Corp, Inc.*, No. 69DU-CV-20-1845 (Minn. Dist. Ct. 6th Dist. Jan. 20, 2021) (Referee Schulte) (Appendix PED-34)

*Smith v. Temple Corp, Inc.*, No. 69DU-CV-20-1845 (Minn. Dist. Ct. 6th Dist. Jan. 5, 2021) (Referee Schulte) (Appendix PED-34a)

*Smith v. Temple Corp, Inc.*, No. 69DU-CV-20-1845 (Minn. Dist. Ct. 6th Dist. Mar. 3, 2021) (Referee Schulte) (Appendix PED-34b)

*STANDING ORDER Re: 60 day period following the expiration of the Peacetime Emergency Declared in Executive Order 20-01* (Minn. Dist. Ct. 10th Dist. Anoka Cty. Oct. 29, 2020) (Judge Fountain Lindberg) (Appendix PED-36)

1800 Baxter County Road LLC v. Portillo's Hot Dogs, LLC, No., 62-CV-20-3818 Order & Memorandum (Minn. Dist. Ct. 2nd Dist. Mar. 30, 2021) (Judge Gilligan) (Appendix PED-37)

Tich v. \_\_\_\_\_, No. 27-CV-HC-20-1432 (Minn. Dist. Ct. 4th Dist. July 24, 2020) (Referee Sedillos) (Appendix PED-38)

Tich v. \_\_\_\_\_, No. 27-CV-HC-20-1432 (Minn. Dist. Ct. 4th Dist. July 22, 2020) (Referee Sedillos) (Appendix PED-38a)

\_\_\_\_\_ v. Rick Bergman Properties, Inc., No. 27-CV-HC-20-1456 (Minn. Dist. Ct. 4th Dist. Sep. 14, 2020) (Referee Sedillos) (Appendix PED-39)

\_\_\_\_\_ v. Yimer, No. 27-CV-HC-20-1460 (Minn. Dist. Ct. 4th Dist. Aug. 11, 2020) (Referee Sedillos) (Appendix PED-40)

\_\_\_\_\_ v. Assertive MPLS Properties, LLC, et al., No. 27-CV-HC-20-1514 (Minn. Dist. Ct. 4th Dist. Oct. 13, 2020) (Referee Houghtaling) (Appendix PED-41)

Minneapolis Public Housing Authority v. \_\_\_\_\_, No. 27-CV-HC-20-1523 (Minn. Dist. Ct. 4th Dist. Oct. 8, 2020) (Referee Houghtaling) (Appendix PED-42)

\_\_\_\_\_ v. Krey Construction, LLC, No. 27-CV-HC-20-1527 (Minn. Dist. Ct. 4th Dist. Aug. 11, 2020) (Referee Sedillos) (Appendix PED-43)

\_\_\_\_\_ v. Golden Mile Management LLC, No. 27-CV-HC-20-1586 (Minn. Dist. Ct. 4th Dist. Oct. 29, 2020) (Referee Sedillos) (Appendix PED-44)

Chik-Fufa v. \_\_\_\_\_, No. 27-CV-HC-20-1632 (Minn. Dist. Ct. 4th Dist. Oct. 30, 2020) (Referee Sedillos) (Appendix PED-45)

Chik-Fufa v. \_\_\_\_\_, Nos. 27-CV-HC-20-1064 and No. 27-CV-HC-20-1521 (Minn. Dist. Ct. 4th Dist. Sep. 14, 2020) (Appendix PED-45a)

Duke v. \_\_\_\_\_, No. 27-CV-HC-20-1742 (Minn. Dist. Ct. 4th Dist. Jan. 8, 2021) (Referee Sedillos) (Appendix PED-46)

LO2, LLC v. \_\_\_\_\_, No. 27-CV-HC-20-567 (Minn. Dist. Ct. 4th Dist. Oct. 5, 2020) (Referee Houghtaling) (Appendix PED-47)

CBC 202 Limited Partnership v. \_\_\_\_\_, No. 27-CV-HC-20-1301 (Minn. Dist. Ct. 4th Dist. July 21, 2020) (Referee Sedillos) (Appendix PED-48)

\_\_\_\_\_ v. Bartelt and New Spirit Homes, Inc., No. 27-CV-HC-20-1524 (Minn. Dist. Ct. 4th Dist.



Aug. 11, 2020) (Referee Houghtaling) (Appendix PED-49)

v. *Belmore*, No. 27-CV-HC-20-1584 (Minn. Dist. Ct. 4th Dist. Sep. 10, 2020) (Referee Sedillos) (Appendix PED-50)

*Tish v.* \_\_\_\_\_, No. 27-CV-HC-20-1651 (Minn. Dist. Ct. 4th Dist. Nov. 16, 2020) (Judge Sande) (Appendix PED-51)

v. *Johnson*, No. 27-CV-20-1622 (Minn. Dist. Ct. 4th Dist. Sep. 25, 2020) (Judge Fraser) (Appendix PED-52)

*Supportive Living Solutions v.* \_\_\_\_\_, No. 27-CV-HC-20-1771 (Minn. Dist. Ct. 4th Dist. Jan. 4, 2021) (Appendix PED-53)

*Paquin v.* \_\_\_\_\_, No. 27-CV-HC-21-195 (Minn. Dist. Ct. 4th Dist. May 6, 2021) (Referee Houghtaling) (Appendix PED-54)

*Williams v.* \_\_\_\_\_, No. 27-CV-HC-20-1513 (Minn. Dist. Ct. 4th Dist. Oct. 6, 2020) (Judge Miller) (Appendix PED-55)

v. *LMC NE Minneapolis Holdings LLC*, No. 27-CV-HC-21-227 (Minn. Dist. Ct. 4th Dist. May 6, 2021) (Referee Houghtaling) (Appendix PED-56)

*Olson Property Investments v.* \_\_\_\_\_, No. 19AV-CV-20-1479 (Minn. Dist. Ct. 1<sup>st</sup> Dist. June 7, 2021) (Judge Wahi) (Appendix PED-57)

v. *Distinguished Prop., LLC*, No. 27-CV-HC-21-118 (Minn. Dist. Ct. 4th Dist. June 9, 2121) (Referee Houghtaling) (Appendix PED-57a)

*Promised Land Prop., LLC v.* \_\_\_\_\_, No. 48-CV-21-941 (Minn. Dist. Ct. 7th Dist. May 20, 2021) (Judge Kulick) (Appendix PED-58) and Complaint (Appendix PED-58a)

*Donner v.* \_\_\_\_\_, No. 62-HG-CV-21-44 (Minn. Dist. Ct. 2nd Dist. April 22, 2021) (Judge Gilligan) (Appendix PED-59)

*Persaud v.* \_\_\_\_\_, No. 27-CV-HC-21-394 (Minn. Dist. Ct. 4th Dist. July 20, 2021) (Referee Houghtaling) (Appendix PED-60)

*Kennedy v.* \_\_\_\_\_, No. 25-CV-21-1092 (Minn. Dist. Ct. 1st. Dist. July 13, 2021) (Judge Biren) (Appendix PED-61)

v. *People Serving People Charities, Inc.*, No. 27-CV-HC-21-267 (Minn. Dist. Ct. 4th Dist. Aug. 5, 2021) (Referee Houghtaling) (Appendix PED-62)

[English v. \\_\\_\\_\\_\\_, No. 62-HG-CV-21-195 \(Minn. Dist. Ct. 2nd Dist. Aug. 5, 2021\) \(Judge Nelson\) \(Appendix PED-63\)](#)

[Narvaez v. \\_\\_\\_\\_\\_, No. 74-CV-21-986 \(Minn. Dist. Ct. 3rd Dist. Aug. 17, 2021\) \(Judge Bueltel\) \(Appendix PED-64\)](#)

[Orr v. \\_\\_\\_\\_\\_, No. 18-CV-21-2162 \(Minn. Dist. Ct. 9th Dist. Aug. 6, 2021\) \(Referee Davies\) \(Appendix PED-65\)](#)

## **2023 Additions**

[Sherwood Auburn LLC v. Pinzon, 521 P.3d 212 \(Wash. Ct. App. 2022\) \(Appendix PED-66\)](#)

[Nwagwu v. Dawkins, 2021 WL 2775065 \(Conn. Sup. Ct. Mar. 2, 2021\) \(unpublished\) \(Appendix PED-67\)](#)

[The Redwell LLLP v. \\_\\_\\_\\_\\_, No. 27-CV-HC-22-6607 \(Minn. Dist. Ct. 4th Dist. Feb. 13, 2023\) \(Appendix PED-68\)](#)

## **From Residential Eviction Defense and Tenant Claims in Minnesota**

[614 Co. v. D. H. Overmayer Co. Inc., First and Second Interlocutory orders, No. 204678 \(Minn. Dist. Ct. 2nd Dist. Apr. 22 and July 9, 1972\) \(RED Appendix 54\)](#)