

Pandemic Eviction Training for Law Enforcement (Including Eviction Action Basics)



**By Lawrence McDonough and Rachael Sterling
Attorneys at Law**

**Law Enforcement Training Services, LLC, and
The Minnesota Sheriffs' Association**

February 16, 2021

Authors and Prior Presentations



Revised from Prior Presentations:

Third District Court - January 29, 2021

Ninth District Court - January 8, 2021

Lawrence McDonough

Attorney at Law

Adjunct Professor of Law, University of Minnesota School of Law

Senior Minnesota Counsel, Lawyers' Committee for Civil Rights Under Law

651-398-8053

mcdon056@umn.edu

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

Rachael Sterling

Attorney at Law

COVID-19 Eviction Response Coordinator & Housing Attorney

HOME Line

(612) 255-8859

rachaels@homelinemn.org

<https://homelinemn.org/staff/rachael-sterling/>

Topics



Resources

Eviction Action Basics

Pandemic Economic and Health Impacts on Tenants

Pandemic Eviction Actions

Equitable Considerations

Post Emergency Executive Order 20-79 Eviction Actions

Planning for Post Emergency Executive Order 20-79

Eviction Actions

Resources



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

- Residential Eviction Defense and Tenant Claims in Minnesota
- Answers Forms
- Pandemic Eviction Defense and Tenant Claims in Minnesota
- Tenants of Landlords in Foreclosure
- Public and Subsidized Housing
- Criminal Activity Cases
- Personal Property Disputes after an Eviction Judgment
- Expungement of Eviction Court Records
- Motions to Vacate Judgments
- Habitability and Lockout Cases
- Security Deposits

HOME Line - <https://homelinemn.org/> HOME Line provides free and low-cost legal, organizing, education, and advocacy services so that tenants throughout Minnesota can solve their own rental housing problems.

Pro Justice - <http://www.projusticemn.org/> Scanned unreported decisions, forms, and instructions. After registering (if you have not done so already), go to Civil Law, Library, Housing, and Eviction Defense.

Law Help - <http://www.lawhelpmn.org/> Answers to legal questions, finding legal aid offices, and court information.

Eviction Action Basics



Eviction actions are summary proceedings in that they move quickly before and after trial, although trials are no different than other civil trials.

They are governed by [Minn. Stat. Chapter 504B](#) as well as the common law of contracts and property.

Eviction Action Basics - Appearances



- Artificial entities like corporations and LLCs must be represented by counsel, except in housing courts in the 2nd and 4th district courts.
 - *Hinckley Square Associates v. Cervene*, 871 N.W.2d 426 (Minn. Ct. App. 2015); *Walnut Towers v. Schwan*, No. A07-1311, 2008 WL 4224462 (Minn. Ct. App. Sept. 16, 2008) (unpublished);
 - Minn. Gen. R. Prac. 603; *The Community Cares v. Faulkner*, 949 N.W.2d 296 (Minn. 2020).
- Unincorporated businesses and individual can appear pro se.
- The action may be commenced only by the person entitled to the premises, or the authorized management company or agent for the owner of the premises.
 - Minn. Stat. § 504B.285, subd. 1; Minn. Stat. § 481.02, subd. 3(13).
- The tenant or landlord may be represented by a person who is not a licensed attorney, except that person cannot conduct a jury trial or appeal and cannot charge or collect a separate fee for services rendered.
 - Minn. Stat. § 481.02, subd. 3(13).

Eviction Action Basics - Appearances



Effective March 1, 2021, eligible legal paraprofessionals under the supervision of a member of the bar, may provide advice to and appear in court on behalf of tenants in housing disputes as defined in Minn. Stat. Chapter 504B and § 484.014 (expungements) in district courts that have established a Housing Court or a dedicated calendar for housing disputes, except the Housing Court in the Fourth Judicial District.

Order Implementing Legal Paraprofessional Pilot Project, No. ADM19-8002 (Minn. Sep. 29, 2020); Minn. Supervised Prac. R. 12.

<https://mncourts.gov/mncourtsgov/media/Appellate/Supreme%20Court/RecentRulesOrders/Administrative-Order-Implementing-Legal-Paraprofessional-Pilot-Project.pdf>

See Report and Recommendations to the Minnesota Supreme Court Implementation Committee for Proposed Legal Paraprofessional Pilot Project, No. ADM19-8002 (Mar. 2, 2020).

<https://www.mncourts.gov/mncourtsgov/media/Implementation-Committee/Report-and-Recommendations-to-Minnesota-Supreme-Court-reduced-size.pdf>

Eviction Action Basics - Proof and Findings



- The plaintiff must prove claims supporting eviction by a preponderance of the evidence, and the court must make specific findings on the claims of the plaintiff.
 - *Chancellor Manor v. Thibodeaux*, 628 N.W.2d 193, 197 (Minn. Ct. App. 2001).
- The Minnesota Rules of Evidence, Civil Procedure, and General Rules of Practice apply to eviction actions
 - Housing Court rules of the General Rules of Practice apply only to the 2nd and 4th district courts.
- Hearsay statements in testimony or within documents should be excluded unless they meet an exception to the hearsay rule.
 - *Countryview Mobile Home Park v. Oliveras*, No. A04-160, 2004 WL 20049986 (Minn. Ct. App. Sept. 14, 2004) (unpublished).
- The parties and other lay witnesses have the right to testify about their observations without being experts.
 - *Stewart v. Anderson*, No. A06-1878, 2007 WL 2366528 (Minn. Ct. App. Aug. 21, 2007) (unpublished).

Eviction Action Basics - Subject Matter Jurisdiction



- Minn. Stat. § 504B.285, subd. 1
 - The most common basis for subject matter jurisdiction
 - Holding over after sale on an execution or judgment, expiration of the redemption period following mortgage foreclosure, or termination of a contract for deed
 - Holding over after expiration of the term of the lease
 - Breach of lease
 - Nonpayment of rent
 - Holding over after termination of the tenancy by notice to quit

- Minn. Stat. § 504B.301
 - Alternative jurisdiction for unlawfully detaining the premises after having entered unlawfully, forcibly, or peaceably.
 - Unlawful detention includes a seizure on residential rental property of contraband or a controlled substance manufactured, distributed or acquired in violation of Chapter 152 (Prohibited Drugs) and with a retail value of \$100.00 or more, if the tenant does not have a defense under § 609.5317.

Eviction Action Basics - Complaint



- The plaintiff must plead in the complaint "the facts which authorize the recovery of possession."
 - Minn. Stat. § 504B.321; *Mac-Du Properties v. LaBresh*, 392 N.W.2d 315, 317, 318 (Minn. Ct. App. 1986).
- The state complaint form requires the landlord to plead compliance with Minn. Stat. § 504B.181, in that the landlord has disclosed:
 - the names and addresses of the authorized manager of the premises and,
 - the owner or agent authorized to accept service, and
 - posted said information in an obvious place on the property
- If names and addresses are not disclosed as required by the statute, the landlord must show that the tenant knew such information at least 30 days before the issuance of the summons.

Eviction Action Complaint form instructions

<https://www.mncourts.gov/mncourtsgov/media/CourtForms/HOU101.pdf?ext=.pdf>

Eviction Action Basics - Methods of Service



Service must be complete at least 7 days before the first hearing

Minn. Stat. § 504B.331 (formerly § 566.06) provides:

- Personal service
- If the defendant cannot be found in the county, the summons may be served at least seven days before the date of the court appearance by leaving a copy at the defendant's last usual place of abode with a person of suitable age and discretion residing there
- Mail and posting sequence:
 - (1) Defendants cannot be found in the county,
 - (2a) For residential property, service has been attempted at least twice on different days, with at least one of the attempts between 6:00 p.m. and 10:00 p.m.,
 - (2b) For nonresidential property, no person actually occupies the property,
 - (3) A copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff,
 - (4) The plaintiff or counsel files an affidavit (a) stating that the defendant cannot be found, or the affiant believes that the defendant is not in the state, and (b) that a copy of the summons has been mailed to the defendant at the defendant's last address known to the plaintiff, and
 - (5) Posting the summons in a conspicuous place on the property for not less than one week.

Eviction Action Basics - Service for Expedited Eviction Actions



Minn. Stat. § 504B.321

- Plaintiff requests an expedited procedure by affidavit
 - stating specific facts and instances under Minn. Stat. § 504B.171 (certain types of illegal activity), or
 - on the basis that the tenant is causing a nuisance or other illegal behavior that seriously endangers the safety of other residents, their property, or the landlord's property,
- Then the summons shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown.

Eviction Action Basics – Strict Compliance and Server Requirements



Personal Jurisdiction and Proper Service of the Summons and Complaint

Strict compliance with service requirements, rather than mere substantial compliance, is a precondition to personal jurisdiction. *Koski v. Johnson*, 837 N.W.2d 739 (Minn. Ct. App. 2013).

Service by the plaintiff is improper. Minn. R. Civ. P. 4.02. In *Lewis v. Contracting Northwest, Inc.*, 413 N.W.2d 154 (Minn. Ct. App. 1987), the court explained the reason for precluding parties from serving process: “The law has wisely entrusted the decision of disputes between citizens to persons wholly disinterested and free from bias and the acrimony of feeling so frequently, if not uniformly, engendered by litigation; and the same is equally true of the persons selected to execute the process necessary to the adjustment of such disputes.” *Id.* at 155.

Eviction Action Basics - Scheduling



- Minn. Stat. § 504B.321
 - The first appearance shall be between 7 and 14 days from the day of issuing the summons.

- Expedited eviction action
 - the complaint and affidavit shall be reviewed by a referee or judge and scheduled for an expedited hearing only if
 - sufficient supporting facts are stated and
 - they meet the requirements of this paragraph, and
 - if so, the appearance in an expedited hearing shall be not less than five days nor more than seven days from the date the summons is issued.

Eviction Action Basics - Nonpayment of Rent



Proof

- Testimony and documents
- Manufactured home park tenancies and some public and subsidized housing programs require notice for nonpayment of rent eviction actions.
 - *See Answer Forms 2-8, Residential Eviction Defense and Tenant Claims in Minnesota*
<http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsinMinnesota.html>

Eviction Action Basics - Nonpayment of Rent Defenses



Property conditions and habitability

- Minn. Stat. §§ 504B.161, the landlord must maintain:
 - (1) premises and all common areas are fit for the use intended by the parties,
 - (2) the premises in reasonable repair, and
 - (3) the premises in compliance with applicable state and local housing maintenance, health, and safety laws.
- Exception: where the violation was caused by the willful, malicious, or irresponsible conduct of the tenant or tenant's agent.
- The statute is to be liberally construed.
- The parties may not waive or modify the covenants.
- While the tenant may agree in writing to perform special repairs or maintenance if such agreement is supported by adequate consideration, the agreement does not waive the covenants.

Eviction Action Basics - Nonpayment of Rent Defenses



Property conditions and habitability

Paying rent into court

- The defendant can provide security in one of three ways:
 - Pay into court "rent to be withheld" and "any future rent withheld" [rather than back rent],
 - Deposit such rents in escrow subject to appropriate terms and conditions, or
 - Provide adequate security if such is more suitable under the circumstances.
 - *Fritz v. Warthen*, 213 N.W.2d 339, 341-43 (1973)

Relief: Rent abatement. *Id.*

Eviction Action Basics - Nonpayment of Rent Defenses



Nonpayment of Rent Defenses - Cont.

- Landlord failure to comply with city rental license ordinances.
 - *Beaumia v. Eisenbraun*, No. A06-1482, 2007 WL 2472298 (Minn. Ct. App. Sep. 4, 2007) (unpublished).
- Landlord nonpayment of utilities or illegal shared metering of utilities.
 - Minn. Stat. § 504B.215.
- Landlord charging improper late fees or other fees.
 - Minn. Stat. § 504B.177.
- Landlord waiver of rent claim by accepting a partial payment of rent without a written nonwaiver clause.
 - Minn. Stat. § 504B.291.
- Landlord retaliation for complaints about material violations by the landlord of state or local law, residential covenants, or the lease.
 - *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019).

Eviction Action Basics - Holding Over



Proof of Proper Notice

- Testimony and documents
- Month-to-month tenancies: Notice must be served (and received) before the first day of the month in which the tenancy is to terminate
 - Minn. Stat. § 504B.135; *Oesterreicher v. Robertson*, 187 Minn. 497, 501, 245 N.W. 825, 825 (1932).
- Mortgage foreclosure and contract for deed cancellation
 - Minn. Stat. § 504B.285, subd. 1a., 1b.
- Manufactured home park tenancies
 - Minn. Stat. §§ 327C.09, 327C.095, 327C.10.
- Some public and subsidized housing programs require notice for eviction actions.
 - See Answer Forms 3-8, Residential Eviction Defense and Tenant Claims in Minnesota
<http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsInMinnesota.html>

Holding Over Defenses

- Landlord retaliation
 - (1) Minn. Stat. § 504B.285, or (2) common law. *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019).
- Landlord waived the notice to end the lease by accepting rent after the move out date
 - *Pappas v. Stark*, 123 Minn. 81, 83, 142 N.W. 1042, 1047 (1913).

Eviction Action Basics - Breach of Lease



Proof

- Testimony and documents
- Material breach or substantial failure to perform under the lease.
 - *Cloverdale Foods of Minnesota, Inc.*, 580 N.W.2d 46, 49 (Minn. Ct. App. 1998); *Skogberg v. Huisman*, No. C7-02-2059, 2003 WL 22014576 (Minn. Ct. App. Aug. 2003) (unpublished).
- Lease "right of reentry" clause.
 - *Bauer v. Knoble*, 51 Minn. 358, 359, 53 N.W. 805, 805 (1892).
- Manufactured home park tenancy notice requirement:
 - Minn. Stat. §§ 327C.09, 327C.095, 327C.10
- Some public and subsidized housing programs require notice for eviction actions.
 - See Answer Forms 3-8, Residential Eviction Defense and Tenant Claims in Minnesota
<http://povertylaw.homestead.com/ResidentialEvictionDefenseandTenantClaimsInMinnesota.html>

Eviction Action Basics - Breach of Lease



Breach of Lease Defenses

- The landlord waived lease provisions by failing to enforce them or is estopped from enforcing them.
 - *Mitchell v. Rende*, 225 Minn. 145, 30 N.W.2d 27 (1947).
- The landlord waived the alleged breaches or is estopped from enforcing them by accepting rent with knowledge of the breach.
 - *Kenny v. Seu Si Lun*, 101 Minn. 253, 256-58, 112 N.W. 220, 221-22 (1907).
- The landlord did not reasonably accommodate the tenant's disability.
 - 42 U.S.C. § 3604(f)(3); 24 C.F.R. Part 100; *Douglas v. Kriegsfield Corp.*, 884 A.2d 1109 (D.C. Ct. App. 2005); Minn. Stat. § 363A.10; *Schuett v. Anderson*, 386 N.W.2d 249, 253 (Minn. Ct. App. 1986).
- The landlord alleged the tenant unlawfully allowed certain unlawful activity on the property and the tenant did not know or have reason to know that there was unlawful activity on the property,
 - Minn. Stat. § 504B.171

Eviction Action Basics - Breach of Lease



Breach of Lease Defenses - Cont.

- The tenant could not prevent the illegal drugs from being brought on the property.
 - Minn. Stat. § 609.5317, subd. 3.
 - Medical marijuana use is legal under state law. Minn. Stat. § 152.32.
- The landlord is penalizing the tenant for calling for police or emergency assistance in response to domestic abuse or any other conduct.
 - Minn. Stat. § 504B.205.
- The tenant is a victim of domestic abuse, criminal sexual conduct, or stalking.
 - Minn. Stat. §§ 504B.285, Subd. 1 (b); 504B.206, Subd. 1 (a).
- Forfeiting of the tenancy would be a great injustice, since Plaintiff's rights are 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).
- The landlord retaliated for tenant complaints about material violations by the landlord of state or local law, residential covenants, or the lease.
 - *Cent. Hous. Assocs., LP v. Olson*, 929 N.W.2d 398 (Minn. 2019).

Eviction Action Basics - Relief



- Entry of judgment for the plaintiff or defendant.
- For landlord improperly filing an expedited case, dismiss the case and fine the landlord \$500.
 - Minn. Stat. § 504B.321.
- For property condition violations, abate (reduce) the rent.
 - *Fritz v. Warthen*, 298 Minn. 54, 58-59, 213 N.W.2d 339, 341-42 (1973); Minn. Stat. § 504B.161.
- For a landlord business not registered name with the Secretary of State, continue the hearing to allow the landlord to register its trade name, and award the tenant \$250.00 in costs.
 - Minn. Stat. § 333.001-333.06.
- For violations of the utility statute, abate rent and award treble damages or \$500, whichever is greater, and reasonable attorney's fees.
 - Minn. Stat. § 504B.215, § 504B.221.

Eviction Action Basics - Relief



- Redemption for owed rent: Give the tenant time to pay it.
 - *614 Co. v. D.H. Overmayer*, 297 Minn. 395, 398, 211 N.W.2d 891, 893 (1973) (affirmed 30 day extension to pay rent).
- If the tenant loses, give the tenant seven days to move if the tenant did not cause a nuisance, or seriously endanger other tenants, their property, or the landlord's property, and if having to move in less than 7 days would be a substantial hardship.
 - Minn. Stat. § 504B.345 (formerly § 566.09).
- Award costs and disbursements.
 - Minn. Stat. § 549.02; *HNA Properties v. Moore*, 848 N.W.2d 238 (Minn. Ct. App. 2014).
- Expunge or seal this court file:
 - (1) Minn. Stat. § 484.014, or (2) common law inherent authority. *State v. C.A.*, 304 N.W.2d 353 (Minn. 1981); Minn. Stat. § 504B.345, Subd. 1 (c)(2).
- Attorney fees:
 - (1) For nonpayment of rent redemption, landlord attorney fees limited to \$5.00.
 - Minn. Stat. § 504B.291; *Cheyenne Land Co. v. Wilde*, 463 N.W.2d 539 (Minn. Ct. App. 1990),
 - (2) For the prevailing tenant if the lease provides for attorney fees to the landlord, or
 - Minn. Stat. § 504B.172, or
 - (3) For the prevailing landlord if the lease provides for attorney fees to the landlord, except for nonpayment of rent redemption.

Pandemic Impacts on Tenants



Topics:

- Economic Impacts on Tenants
- Health Impact of Evictions

Unemployment



Unemployment is high. The Minnesota unemployment rate in December 2020 was 4.4.%, down from 7.4% in August and 9.9% in May, but still up from 2.9% in March.

Resources:

State and National Employment and Unemployment Current Data (Minnesota Department of Employment and Economic Development - viewed Jan. 27, 2121)

<https://mn.gov/deed/data/current-econ-highlights/state-national-employment.jsp>

Minnesota Unemployment (Department of Numbers - viewed Jan. 27, 2121)

<https://www.deptofnumbers.com/unemployment/minnesota/>

Unemployment



Minnesota cumulative unemployment insurance applicants by county from March 16 to January 21, 2021 as a share of 2019 annual labor force:

- Fourth Judicial District - Hennepin County: 278,889 (**39.2%**) of 711,530
- Tenth Judicial District - Anoka County: 82,317 (**41.4%**) of 198,938
- Third Judicial District - Olmsted County: 36,037 (**40.2%**) of 89,730; Winona County: 9,370 (**32.3%**) of 29,053; Steele County: 7,629 (**37.3%**) of 20,451
- Ninth Judicial District - Beltrami County: 8,299 (**33.5%**) of 24,779; Crow Wing County: 13,825 (**42.0%**) of 32,904; Roseau County: 5,743 (**72.0%**) of 7,972

Unemployment Insurance Statistics (Minnesota Department of Employment and Economic Development - viewed Jan. 27, 2121)

<https://mn.gov/deed/data/data-tools/unemployment-insurance-statistics/>

Local Area Unemployment Statistics (LAUS) (Minnesota Department of Employment and Economic Development - viewed Jan. 27, 2121) (selected Data Tool, Minnesota Counties, County, Historical Data, Annual and Labor Force)

<https://mn.gov/deed/data/data-tools/laus/>

Census Data on Tenants, Unemployment, and Rents



The Census Bureau Household Pulse Survey estimated that in Minnesota through January 18, 2021, there were 608,418 tenant households. From its survey responses, it estimated:

- **69,988 (11.5%) not currently caught up on rent payments,**
- **217,481 (35.7%) unemployed, and**
- **378,127 (62.1%) experiencing loss of employment income of a household member.**

Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota (United States Department of Commerce Jan. 27, 2021)

https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk22/housing1b_week22.xlsx

(downloaded Jan. 27, 2021)

The Census estimate of the number of total tenant households is strong. In 2019, there were 611,160 renter households in Minnesota.

State of the State's Housing 2019 - Biennial report of the Minnesota Housing Partnership at 4, 6

<http://www.mhponline.org/images/stories/images/research/SOTS-2019/2019FullSOTSTFinal-small.pdf>

(viewed Jan. 27, 2021)

Census Data on Tenants, Rents, and Risk of Eviction



Of 608,418 estimated adult tenants, the Census estimated 21,908 did not have a rent obligation, and 989 had rent deferred, for a subtotal of 585,521.

Of these 585,521 adult tenants, the Census estimated about confidence to pay the next month's rent:

- **Only 359,200 (61.3%) had high confidence, and**
- **115,177 (19.7%) had no or slight confidence**

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 Jan. 27, 2021)

https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk22/housing2b_week22.xlsx (downloaded Jan. 28, 2021)

Of the 69,988 adult tenants estimated to be not currently caught up on rent payments, the Census estimated about the likelihood of leaving this home due to eviction in next two months:

- **24,155 (34.5%) were very likely or somewhat likely.**

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 Jan. 27, 2021)

https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk22/housing3b_week22.xlsx (downloaded Jan. 27, 2021)

Note that these tenants were assessing the risk of eviction while Executive Order 20-79 has suspended

People of Color Are at Great Risk of Eviction



Of 175,616 estimated adult non-white and multiracial tenants, the Census estimated 11,314 did not have a rent obligation, for a subtotal of 164,302.

Of these 164,302 adult non-white and multiracial tenants, the Census estimated about confidence to pay the next month's rent, **54,823 (33.4%) had no or slight confidence.**

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 Jan. 27, 2021)

https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk22/housing2b_week22.xlsx

(downloaded Jan. 27, 2021)

People of Color Are at Great Risk of Eviction



Of the 69,988 adult estimated by the Census to be not currently caught up on rent payments, **44,835 (64.1%) were non-white and multiracial tenants**, of whom the Census estimated about the likelihood of leaving this home due to eviction in next two months, **22,251 (49.6%) were very or somewhat likely**.

Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics:

https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk22/housing3b_week22.xlsx

(downloaded Jan. 27, 2021)

Health Impact of Renewed Evictions During the Pandemic



A recent 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>

Health Impact of Renewed Evictions During the Pandemic



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 Executive Order 20-79 and its predecessors.

Health Impact of Renewed Evictions During the Pandemic



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
Minnesota	5,639,632	Eviction suspension maintained			
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

The population estimates are from *Annual Estimates of the Resident Population for the United States, Regions, States, and The District of Columbia: 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 Dec. 9, 2020)

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 Dec. 9, 2020)

Health Impact of Renewed Evictions During the Pandemic



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
D.C.	3,900	170
Florida	197,700	6,140
Hawaii	2,200	30
Illinois	63,200	2,670
Massachusetts	31,800	2,400

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 (viewed Dec. 15, 2020)

Health Impact of Renewed Evictions During the Pandemic

State	Cases Prevented by Suspension	Deaths Prevented by Suspension
<u>Minnesota</u>	<u>22,200</u>	<u>680</u>
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

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 (viewed Dec. 15, 2020)

Health Impact of Renewed Evictions During the Pandemic

The estimates 22,200 cases prevented and 680 lives saved in Minnesota 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 Dec. 15, 2020)

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.

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.***

Situation Update for COVID-19 (Minnesota Department of Health - viewed January 4, 2021).
<https://www.health.state.mn.us/diseases/coronavirus/situation.html>

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.

Emergency Executive Order 20-79



Stays on residential evictions have been in place since March 2020 under Emergency Executive Order 20-14 and 20-73.

EO 20-79 is the current Executive Order suspending evictions and has been in effect since August 4, 2020.

It protects residential tenants from evictions from landlords, as well as post-mortgage foreclosure evictions, with some exceptions.

It remains in effect until the peacetime emergency declared in Emergency Executive Order 20-01 is terminated or until it is rescinded by proper authority.

https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20%28002%29_tcm1055-440501.pdf

Emergency Executive Order 20-79 - Exceptions



Paragraph 2 of the Order provides that 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](#) (controlled substances, prostitution, unlawful use or possession of a firearm, stolen property or property obtained by robbery, and acts under [Minn. Stat. § 504B.206, subdivision 1, paragraph \(a\)](#) (domestic abuse, criminal sexual conduct, and harassment));
- 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.

Nonpayment of rent is not an exception.

Emergency Executive Order 20-79 - Exceptions



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.

Emergency Executive Order 20-79 - Writs of Recovery



Paragraph 5 states that 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,

Exceptions:

- 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.

Paragraph 5 is not limited to residential rental eviction writs, so it also covers eviction writs for commercial tenancies and post mortgage foreclosure and contract for deed cancellations.

Emergency Executive Order 20-79 - Notice Requirements



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.**

Emergency Executive Order 20-79



Violations:

Pursuant to Minn. Stat. § 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 Minn. Stat. § 8.31.

Application:

- This Executive Order does not apply to properties on federal tribal trust land.
- Nothing in this Executive Order creates grounds for eviction or lease termination beyond what is provided for by Minnesota Statutes.
- 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.
- Emergency Executive Order 20-79 is Constitutional. [Heights Apartments, LLC, and Walnut Trails, LLLP v. Walz, No. 20-CV-2051, Order on Motion to Dismiss and Motion for Preliminary Injunction \(D. Minn. Dec. 31, 2020\) \(Appendix PED-21\) \(Judge Brasel\).](#)

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



The 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.

Part of the Act remains in effect.

<https://library.nclc.org/sec-4024-temporary-moratorium-eviction-filings>

<https://library.nclc.org/major-consumer-protections-announced-response-covid-19#content-1>

CARES Act § 4024 - Notice Requirements



After July 25, 2020

The federal moratorium also 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.

This provision is not limited to nonpayment of rent, and has no expiration date.

CARES Act § 4024 - Covered Properties



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.

According to recent estimates, the CARES Act applies to as many as 50% of tenancies in Minnesota.

CARES Act § 4024 - Covered Properties



- Properties that “participate in” a subsidy program covered by the Violence Against Women Act (VAWA”):
 - Section 8 Housing Choice Voucher (“HCV”) or VASH (HUD-Veterans Affairs) voucher
 - 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
 - Property receives a project-based subsidy through HUD
 - Property receive a project-based subsidy through the U.S. Department of Agriculture
- Property participated in the Section 542 Rural Housing Voucher program
- Property has any tenant who uses a Rural Housing Voucher

CARES Act § 4024 - Covered Properties



Property has 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

CDC Eviction Suspension Order



Centers for Disease Control and Prevention (CDC) Order - Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19

<https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>

It became effective on September 4, 2020. On January 20, 2021, the CDC announced extension of the order temporarily halting residential evictions until ***at least March 31, 2021.***

Media Statement from CDC Director Rochelle P. Walensky, MD, MPH, on Extending the Eviction Moratorium (U.S. Department of Health & Human Services Jan. 20, 2021)

<https://www.cdc.gov/media/releases/2021/s0121-eviction-moratorium.html>

(viewed Jan. 21, 2021)

Congress is considering an extension through ***September 2021.***

Biden Extends Eviction Moratorium until March 31: What Renters Should Know, (CNET Jan. 21, 2021) <https://www.cnet.com/personal-finance/biden-eviction-moratorium-what-renters-should-know-if-ban-extends-to-sept-30/> (viewed Feb. 11, 2021)

It declares 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

authorizing 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."

CDC Eviction Suspension Order - Tenant Declaration



The moratorium applies only to tenants who present a signed form declaration, 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."

CDC Eviction Suspension Order - Resources



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>

CDC Eviction Suspension Order - Considerations



It might not apply while Executive Order 20-79 is in effect, since Executive Order 20-79 generally provides greater level of public health protection (i.e. more than just nonpayment of rent cases).

However, one of the Executive Order 20-79 exceptions provides less protection by allowing the property owner to evict tenants to allow property owner or owner's family member(s) to move into the property.

If the courts interpret the CDC order as providing a "floor" of eviction protection, local moratorium provisions could be considered on a case-by-case basis and applied in addition to the CDC order where the local provision is more favorable to tenants.

Mortgage Foreclosures



Under the CARES Act § 4022, a servicer of federally backed mortgage loan for 1-4 family properties may not initiate any judicial or nonjudicial foreclosure process, move for a foreclosure judgment, order a sale, or execute a foreclosure-related eviction or foreclosure sale. This provision is not limited to borrowers with a COVID-19 related hardship. <https://library.nclc.org/sec-4022-foreclosure-moratorium-and-consumer-right-request-forbearance>

The provision lasted until May 17, 2020, but the moratorium was extended to June 30, 2020 by guidelines issues by Fannie Mae, Freddie Mac, Federal Housing Administration (FHA), Veterans Administration (VA), and United States Department of Agriculture (USDA). <https://library.nclc.org/major-consumer-protections-announced-response-covid-19#content-1>

The FHA extended the moratorium for FHA Title II single family forward mortgage and Home Equity Conversion Mortgage (HECM) reverse mortgage programs, except for those secured by vacant and/or abandoned properties, until August 31, and again until December 31, 2020. <https://www.hudexchange.info/news/fha-suspends-foreclosures-and-evictions-amid-the-covid-19-national-emergency/>

On December 2, 2020, the FHA announced that Fannie Mae and Freddie Mac will extend the moratoriums on single-family foreclosures and real estate owned (REO) evictions until at least January 31, 2021. The foreclosure moratorium applies to Enterprise-backed, single-family mortgages only. The REO eviction moratorium applies to properties that have been acquired by an Enterprise through foreclosure or deed-in-lieu of foreclosure transactions. <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums-12022020.aspx>

Mortgage Foreclosures



On January 19, 2021, the Federal Housing Finance Agency (FHFA) announced that Fannie Mae and Freddie Mac (the Enterprises) will extend the moratoriums on single-family foreclosures and real estate owned (REO) evictions until February 28, 2021. The foreclosure moratorium applies to Enterprise-backed, single-family mortgages only. The REO eviction moratorium applies to properties that have been acquired by an Enterprise through foreclosure or deed-in-lieu of foreclosure transactions.

<https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums-1192021.aspx>

On January 21, 2021, the United States Department of Housing and Urban Development (HUD) announced extension of its foreclosure and eviction moratorium for single family mortgages insured by the FHA or guaranteed by the Office of Native American Programs' Section 184 and 184A loan guarantee programs through March 31, 2021.

https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_008

State executive orders did not suspend mortgage foreclosures or contract for deed cancellations, but they suspended eviction court actions based on foreclosures and cancellations.

Court Orders on Operations of the Minnesota Judicial Branch



- The Minnesota Judicial Branch continues to be in a transitional phase
- Hearings across all case types will be conducted remotely until February 1, 2021
 - 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 and District Court pandemic orders are posted here:
<http://www.mncourts.gov/Emergency.aspx>

House File No. 4556, Art. 1, §16



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.

<https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/74/>

It is unclear how this will affect 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.325 (stay of eviction writ),
- Minn. Stat. § 504B.371 (eviction appeal),
- Minn. Stat. § 504B.372 (lockout motion by landlord and appeal),
- Minn. Stat. § 504B.385 (rent escrow action), and
- Minn. Stat. § 504B.401 (scheduling tenant remedies action).

Pandemic Eviction Action

Causes of Action and Decisions



Required Pre-filing Termination Notices

- Landlord family residency: 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. Minn. Stat. § 504B.135; *Oesterreicher v. Robertson*, 187 Minn. 497, 501, 245 N.W. 825, 825 (1932).
 - In leases with notice provisions, 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 \(Nov. 18, 2020\) \(Appendix PED-22\)](#).
- CARES Act Covered Properties: 30-day notice. See [Newcastle Lake LLC v. Carmichael, No. 2020-005609-CC-20 \(Fla. Cir. Ct. 11th Cir. Miami-Dade County Oct. 21, 2020\) \(Judge Murray\) \(Appendix PED-4\)](#); eviction dismissed.
- Manufactured home parks: various notice requirements. Minn. Stat. §§ 327C.09, 327C.095, 327C.10

Pandemic Eviction Action Causes of Action and Decisions



Notice of Intention to File Required for All Eviction Actions

- [*Yimer v. _____*, No. 27-CV-HC-20-1408 \(Minn. Dist. Ct. 4th Dist. Sep. 10, 2020\) \(Referee Sedillos\) \(Appendix PED-1\)](#): dismissed and expunged the action.
- [*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.
- [*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 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.
- [*Kluge v. _____*, No. 31-CV-20-2602 \(Minn. Dist. Ct. 9th Dist. Nov. 19, 2020\) \(Judge McBroom\) \(Appendix PED-15\)](#): dismissed the eviction action without prejudice and ordered entry of judgment for the tenant.

Pandemic Eviction Action Causes of Action and Decisions



Minn. Stat. § 504B.171 Claims

- [*BBS LLC v. _____*, No. 27-CV-HC-20-1412 \(Minn. Dist. Ct. 4th Dist. Dec. 2, 2020\) \(Referee Sedillos\) \(Appendix PED-6\)](#): handyman testified smell of marijuana from apartment, tenants denied use and testified smell from other apartment, court dismissed the eviction action with prejudice, and ordered entry of judgment and expungement.
- [*Aysta Properties, Inc. v. _____*, No. 69VI-CV-20-419 \(Minn. Dist. Ct. 6th Dist. Nov. 13, 2020\) \(Judge Friday\) \(Appendix PED-8\)](#): another tenant testified she overheard talk of drugs and there was a significant amount of people going in and out of the apartment, test showed methamphetamine residue in the apartment but no baseline test showing no presence of methamphetamine before occupancy, court dismissed the eviction action with prejudice and reserved the issue of expungement for determination upon further motion, evidence and argument.
- [*Sela Group, LLC v. _____*, No. 27-CV-HC-20-1360 \(Minn. Dist. Ct. 4th Dist. July 14, 2020\) \(Referee Sedillos\) \(Appendix PED-10\)](#): the tenant's adult homeless son was not a tenant, the son stole her gun and allegedly committed a crime, and she did not have control of him, court dismissed the eviction action with prejudice, and expunged it.

Pandemic Eviction Action

Causes of Action and Decisions



Significant Property Damage Claims: Decisions Holding for the Landlord

- [*Dunnigan v. _____*, No. 19WS-CV-20-864 \(Minn. Dist. Ct. 1st Dist. Sep. 22, 2020\) \(Judge Lutz\) \(Appendix PED-5\)](#): the damage in total was significant and constituted a material violation of the lease, including a bent and broken double garage door following removal not authorized by the landlord, a broken glass panel in the bay window, a cracked lower-level bathroom vanity, removed, broken, and/or now non-existent cabinet drawer fronts in the kitchen, a dented back door, a removed gutter, a dented and gasket-damaged refrigerator, and a damaged basement light fixture, court ordered entry of judgment and issuance of a writ to the landlord.
- [*Munger Terrace, LLLP v. _____*, No. 69DU-CV-20-1348 \(Minn. Dist. Ct. 6th Dist. Sep. 29, 2020\) \(Judge Neo\) \(Appendix PED-12\)](#): damage from a break-in to the front and back doors, there is no evidence that the tenant ever contacted law enforcement, damage will exceed \$2,000, and a history fights, screaming, slamming doors and noises at all hours, court entered judgment for the landlord, subject to a 7-day stay pursuant so the tenant could locate alternate arrangements for him and his pet.

Pandemic Eviction Action

Causes of Action and Decisions



Significant Property Damage Claims: Decisions Holding for the Tenant

- [*Henry v. _____*, No. 33-CV-20-180 \(Minn. Dist. Ct. 10th Dist. Oct. 30, 2020\) \(Judge Hiljus\) \(Appendix PED-2\)](#): tenants materially breached the lease when they began demolition and remodel work, evidence submitted at the hearing that there was no longer any significant damage, court dismissed the action with prejudice.
- [*Benolken v. _____*, No. 62-HG-CV-20-624 \(Minn. Dist. Ct. 2nd Dist. Nov. 30, 2020\) \(Judge Nelson\) \(Appendix PED-3\)](#): the landlord offered evidence of minor damage to the subject property during the time tenant 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; the landlord 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, but 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 and no evidence that the damage to the subject property exceeds the amount of the damage deposit, court entered judgment for the tenant.
- [*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: the landlord presented evidence indicating the Defendant damaged the door but the damage does not constitute significant damage to property, court suspended the action until such time as the Emergency Executive Order 20-79 is modified or expires.

Pandemic Eviction Action Causes of Action and Decisions



Substantial Endangerment Claims

- [*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 Executive Order 20-79, the landlord had not pled with enough specificity.
- [*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 who assaulted another tenant and another individual, extraordinary and exigent circumstances that warrant staying the writ for a reasonable period of time.
- [*Minnesota Parks, LLC v. _____*, No. 31-CV-20-1686 \(Minn. Dist. Ct. 9th Dist. Aug. 5, 2020\) \(Judge Chandler\) \(Appendix PED-13\)](#): the tenant possessed a dog on the premises which caused harm to others and attempted to bite persons in the neighborhood that the tenant not properly restrain, court entered judgment for the landlord.

Pandemic Eviction Action

Causes of Action and Decisions



Landlord Family Residency Claims

- [*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, she lived with him but did not have her own room, she was not homeless and would not become homeless, it was unclear why the landlord couldn't move his daughter into another property he owned, he had not established that a *need* exists to move his daughter into the leased premises and, even if such a need existed, he has not established that moving his daughter into the leased premises would be his only option, court dismissed the eviction action with prejudice and expunged it.
- [See Letter from Evan Romanoff, Assistant Minnesota Attorney General to _____ at 2 \(Nov. 18, 2020\) \(Appendix PED-22\)](#): landlord's attorney advised to provide "evidence that [the landlord] has a need to move into the property."

Equitable Considerations



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).

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, ordering the eviction writ stayed for a month until November 30, 2020.

Equitable Considerations



In *Henry v. _____*, No. 33-CV-20-180 (Minn. Dist. Ct. 10th Dist. Oct. 30, 2020) (Judge Hiljus) (Appendix PED-2), the court found that the tenants materially breached the lease when they began demolition and remodel work, but at the hearing that there no longer was any significant damage. The Court concluded:

“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.”

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

Post Emergency Executive Order 20-79

Eviction Actions



The CARES Act § 4024: requires 30-day lease termination notice given July 25, 2020 or afterward for all eviction bases with no expiration date for covered properties

CDC Eviction Suspension Order: suspends nonpayment of rent evictions for covered tenants through March 31, 2021

Minnesota Supreme Court and District Court pandemic rules may stay in effect.

House File No. 4556, Art. 1, §16 continues suspension of statutory deadlines for court proceedings until 60 days after the end of the peacetime emergency declaration or February 15, 2021, whichever is earlier. It has expired but could be renewed.

Planning for Post Emergency Executive Order 20-79 Eviction Actions



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) <https://homelinemn.org/5709/evictions-in-greater-minnesota-report/>

A random analysis of 203 of those eviction actions in 2017 found 69.0% of the eviction actions were for nonpayment of rent or holding over after notice that would have been prevented by Emergency Executive Order 20-79. The remaining 31.0% alleged breach of lease, but it is unclear how many of them would have fit the limited exceptions under Emergency Executive Order 20-79.

See Id. at 9-11.

<https://homelinemn.org/wp-content/uploads/2018/06/Evictions-in-Greater-Minnesota-Report-with-Appendix.pdf>

Planning for Post Emergency Executive Order 20-79 Eviction Actions



In the Fourth Judicial District for Hennepin County, there are around 6,000 annual eviction actions, or 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) https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/Minnesota_humphrey-report-eviction-homelessness-may-2018.pdf

In the Tenth Judicial District in 2019, Anoka County had 1080 eviction cases, or 90 per month.

Email from John Murphy, Anoka County Law Library Director, to Lawrence McDonough (Oct. 26, 2020).

Planning for Post Emergency Executive Order 20-79 Eviction Actions



In the Third Judicial District, in 2019 there were 1050 (88 per month) eviction actions, 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).

In the Ninth District, in 2019 there were 574 (48 per month) eviction actions, 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).

Planning for Post Emergency Executive Order 20-79 Eviction Actions



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

\$173,000,000-\$330,000,000 January rent shortfall

Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction (Stout Risius Ross - viewed Jan. 27, 2121)

<https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTllOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOiN9>

Planning for Post Emergency Executive Order 20-79 Eviction Actions



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.

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)

<https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>

Planning for Post Emergency Executive Order 20-79 Eviction Actions



While the national estimates of eviction in Minnesota might be high, the high unemployment rate among tenants, high rent burden, and limited financial assistance indicate that the eviction numbers will be considerably higher than before the pandemic.

Remember the Census data.

Out of 608,418 adult tenants estimated by the Census, it estimated:

- **69,988 (11.5%) were not currently caught up on rent payments,**
- **217,481 (35.7%) were unemployed,**
- **378,127 (62.1%) experienced the loss of employment income of a household member,**
- **115,177 (19.7%) had no or slight confidence in the ability to make the next month's payment, and**
- **24,155 (34.5%) very likely or somewhat likely to leave home due to eviction in next two months.**

Compare this with 16,000 eviction court actions in 2017.

Planning for Post Emergency Executive Order 20-79 Eviction Actions



A very conservative estimate of possibly of over ten times the pre-pandemic number of evictions for the first month when nonpayment of rent evictions start is:

- 13,330 eviction court actions statewide, with
- 5,000 in Hennepin County,
- 720 in Anoka County,
- 880 in the Third District, with 310 in Olmsted County, 100 each in Winona and Mower Counties, and 90 in Steele County, and
- 480 in the Ninth District, with 120 in Crow Wing County, 80 each in Beltrami and Itasca Counties, and 60 Polk County.

These evictions would overwhelm the legal services housing attorneys and the courts.

Planning for Post Emergency Executive Order 20-79 Eviction Actions



The Governor, Legislature, and the Courts need to plan for it.

- Financial assistance to tenants and landlords
- Financial assistance to industries that employ tenants
- More judicial resources for evictions
- More attorney representation for tenants
- More mediators for tenants and landlords
- Staggering evictions
- Financial assistance to shelters
- Economic Assistance

Planning for Post Emergency Executive Order 20-79 Eviction Actions



See [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. ...

- 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, 20-23, & 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.

Planning for Post Emergency Executive Order 20-79 Eviction Actions



“(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.”

Planning for Post Emergency Executive Order 20-79 Eviction Actions



“(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.”

Help



Community Mediation Minnesota consists of several member organizations across the state with staff and volunteers to help resolve disputes. Community Mediation Minnesota has a centralized intake and referral system so anyone in Minnesota can call a single phone number and be connected to a mediator who can provide services via video conferencing.

Community Mediation Member Organizations:

Community Mediation & Restorative Services, Inc.

Conflict Resolution Center

Dispute Resolution Center

Mediation & Conflict Solutions

Mediation and Restorative Services

Restorative and Mediation Practices

Contact:

<https://communitymediationmn.org>

1-833-266-2663

info@CommunityMediationMN.org

Help



Free Legal Aid Programs Representing Tenants:

Anishinabe Legal Services - <https://alslegal.org/>

Central Minnesota Legal Services - <https://www.centramnlegal.org/>

Judicare of Anoka County - <http://www.anokajudicare.org/>

Legal Aid Service of Northeastern Minnesota - <http://lasnem.org/>

Legal Assistance of Dakota County - <http://www.dakotalegal.org/>

Legal Assistance of Olmsted County - <http://laocmn.org/>

Legal Services of Northwest Minnesota - <https://lsnmlaw.org/>

Mid-Minnesota Legal Aid - <https://mylegalaid.org/>

Southern Minnesota Regional Legal Services - <https://www.smrls.org/>

Volunteer Lawyers Network - <https://www.vlnmn.org/>

Advice:

On Line Advice: Minnesota Legal Advice Online (MLAO) - <https://www.mnlegaladvice.org/>

Tenant Hotline Advice: HOME Line - <https://homelinemn.org/>

Questions



Lawrence McDonough

Attorney at Law

Adjunct Professor of Law, University of Minnesota School of Law

Senior Minnesota Counsel, Lawyers' Committee for Civil Rights Under Law

651-398-8053

mcdon056@umn.edu

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

Rachael Sterling

Attorney at Law

COVID-19 Eviction Response Coordinator & Housing Attorney

HOME Line

(612) 255-8859

rachaels@homelinemn.org

<https://homelinemn.org/staff/rachael-sterling/>