

# HOUSING COURT: MORE THAN EVICTIONS

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4<sup>th</sup> Judicial District

# HOUSING COURT OVERVIEW

Hennepin (4<sup>th</sup> Judicial District) and Ramsey (2<sup>nd</sup> Judicial District)

Cover issues related to residential and commercial properties:

Evictions (Unlawful Detainers)

Lockouts

Rent Escrow

Emergency Tenant Remedies Actions

Tenant Remedies Action

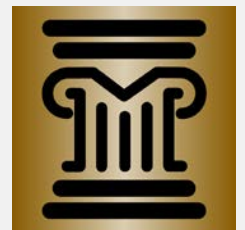
Hazardous Properties

Nuisance Properties

An Eviction appears on a tenants rental record upon the landlord *filing* the action, regardless of the outcome.

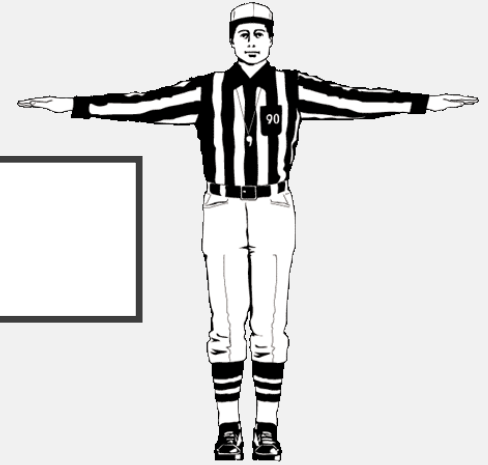
# WHAT IS HOUSING COURT ?

- In 1989 the Minnesota Legislature created housing courts in Hennepin and Ramsey Counties with the purpose of establishing efficiency and consistency in the handling of housing cases. *See* Minn. Stat. § 484.013.
- In Hennepin County, the housing court handles between 5,000 and 6,000 cases per year.
- There are two referees that preside over Housing Court, and a Housing Court staff.
- The vast majority of the cases heard by Hennepin County Housing Court are from Minneapolis.
- The majority of cases heard by Housing Court are Eviction Actions.





# WHAT IS A REFEREE?



- ❖ Referees hear and decide housing court matters.
- ❖ Referees are also assigned in family, harassment, petty crimes, juvenile, and probate/mental health matters.
- ❖ Under the Minnesota Rules of Civil Procedure and State Statutes, Referees are judicial officers that are appointed by the chief judge of the District Court in which we serve. *See Minn. Stat. § 484.70.*
- ❖ Referees make recommended findings and orders which are confirmed and co-signed by a district court judge.
- ❖ Referees do not run for election
- ❖ Appointment is awarded based on the individual's special experience and knowledge of the law.

# HOUSING COURT PURPOSE

Accessible, affordable, and efficient forum for litigants with landlord and tenant disputes.

## TYPES OF CASES



- Eviction Action: Possession claim by Landlord. (Also called Unlawful Detainer Action or “UD”).
  - Commercial and residential properties handled differently
- Nuisance Property Cases.
- Hazardous Building Cases.
- Rent Escrow Action: Non-emergency repair problems.
- Tenant Remedies Action: Non-emergency repair problems.
- Emergency Tenant Remedies Action: Emergency repair problem.
- Unlawful Exclusion Action (Lockout).
- Expungement Motions.

# HOUSING COURT

## WHAT GOVERNS HOUSING COURT.

- Jurisdiction over civil and criminal matters arising under Chapter 504B.
  - Minn. Gen. R. Prac. 601-612 (residential rental property only)
  - Minnesota Rules of Civil Procedure.
  - Minnesota Rules of Evidence.
  - Case law
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# WHAT HAPPENS IN HOUSING COURT?

- Parties are required to engage in settlement negotiations.
  - Free mediation services are available.
  - Lawyers from Mid-Minnesota Legal Aid and Volunteer Lawyers Network are present at initial appearances.
    - Currently, 11 fulltime equivalent attorneys from Legal Aid see clients at the housing court clinic and provide advice and full representation where time and resources permit. In 2017, 149 volunteer attorneys with VLN provided over 1,400 hours of legal service at the clinic. (*Source: Bench & Bar of MN, "In eviction proceedings, lawyers = better outcomes, Feb. 5, 2019.*)
  - Fall 2019, Hennepin County will be providing a social work intern at initial appearances to assist housing court customers in navigating services that might be available to assist in housing transition or obtaining public assistance.
  - If a party fails to appear
    - If Tenant fails to appear, Court can grant a request for immediate writ of recovery.
    - If Landlord fails to appear, Court can dismiss the Eviction Action (and grant expungement).
  - If the parties settle the case, the Court goes over the case with the parties to make sure it is fair and the parties understands the agreement.
  - If the parties cannot settle the case the Court hearing the case and determines what dispute are present for a trial.
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# *COUNTY OF HENNEPIN v. 6131 COLFAX LANE*

- The housing-calendar program, also known as the housing court, lacks authority under Minnesota Statutes section 484.013, subdivision 1(a) (2018), to hear and determine any matter unrelated to “residential rental housing.”
- Standing Order in Hennepin County permitting referees to hear cases in addition to residential rental housing
  - (i) Hazardous buildings (Minn. Stat. §§ 463.15-463.24);
  - (ii) Hazardous excavation/vacant buildings (Minn. Stat. §§ 463.25-463.27);
  - (iii) Tenant remedies actions (Minn. Stat. §§ 504B.395-504B.471);
  - (iv) Emergency tenant remedies actions (Minn. Stat. § 504B.381);
  - (v) Municipal building/housing code enforcement cases under the Uniform Declaratory Judgment Act (Minn. Stat. §§ 555.01-555.16);
  - (vi) Public nuisance enforcement (Minn. Stat. §§ 617.80-617.87);
  - (vii) Commercial and other non-residential property evictions;
  - (viii) Mortgage foreclosures; and
  - (ix) Contract for deed cancellations

# EVICTION ACTIONS

## MOST COMMON BASIS FOR EVICTION ACTIONS.

- Nonpayment of rent
  - Breach of a material provision of a lease
  - Holding over past the end of a lease/tenancy
  - Holding over past the end of foreclosure redemption period.
  - Violation of the covenant not to commit unlawful activity (Minn. Stat. § 504B.171).
    - If a Landlord alleges breach of lease and non-payment of rent, the tenant is not required to deposit the rent in arrears to defend against the material violation of the lease. Trial is bifurcated. Minn. Stat. § 504B.285, subd. 5.
    - Trials occur within 6 days unless the parties consent to longer, may require bond. Minn. Stat. § 504B.341.
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# COMMON DEFENSES

To the extent [a defendant] has the ability to litigate ... other claims and defenses in alternate civil proceedings, it would be inappropriate for [a litigant] to seek to do so in the eviction action; only if the eviction action presents the only forum for litigating these claims would it be appropriate for the district court to entertain them in that action." *Fraser v. Fraser*, 642 N.W.2d 34, 40-41 (Minn. Ct. App. 2002).

Habitability Defense – Landlord’s violation of the “statutory covenants of habitability” codified at Minn. Stat. § 504B.161 - See *Fritz v. Warthen*, 213 N.W.2d 339 (Minn. 1973), *see also Ellis v. John Doe*, A17-1611 (Minn. Ct. App. May 7, 2018) review granted.

Retaliation – notice to quit tenancy – Minn. Stat. § 504B.285, subd. 2. *Parkin v. Fitzgerald*, 240 N.W.2d 828, 831 (Minn. 1976).

Retaliation – rent increase as penalty – Minn. Stat. § 504B.285, subd. 3.

Waiver – may be inferred by conduct, possible to waive a lease provision with a “no waiver or modification except by writing” by conduct. *Pollard v. Southdale Gardens of Edina Condominium Ass’n*, 698 N.W.2d 449, 453 (Minn. Ct. App. 2005); *Minneapolis Community Development Agency (“MCDA”) v. Powell*, 352 N.W.2d 532 (Minn. 1984).

Eviction for nonpayment after accepting partial payment requires written agreement. – Minn. Stat. § 504B.291, subd. 1(c).

Discrimination: *Barnes v. Weis Management Co.*, 347 N.W.2d 519 (Minn. Ct. App. 1984) allows discrimination under Minn. Stat. § 363A.09 to be pleaded as a defense to an eviction action by way of the retaliation defense now codified at Minn. Stat. § 504B.285, subd. 2. Accordingly, it is only a defense to an eviction for holding over after a notice to quit – and not a nonpayment of rent case. (But, could argue it applies for a “rent increase as a penalty” case under Minn. Stat. § 504B.285, subd. 3.)

# EVICTION ACTIONS

## SERVICE OF PROCESS\*

\* STRICT  
COMPLIANCE

*KOSKI V. JOHNSON,*  
837 N.W.2d 739  
(MINN. CT. APP.  
2013)

### Personal Service

- Governed by Minn. Stat. § 504B.331(b)(1), and Minnesota Rule of Civil Procedure 4.03.
- Must be served at least seven days before the date of the court appearance.
- Personally leaving with Tenant

### Substitute Service

- Governed by Minn. Stat. § 504B.331(b)(2), and Minnesota Rule of Civil Procedure Pro. 4.03
- Leaving a copy at the individual's usual place of abode with some person of suitable age and discretion then residing therein.

### Service by Post and Mail

- Governed by Minn. Stat. § 540B.331(d).
- Service has been attempted at least twice on different days, with at least one of the attempts between the hours of 6:00 p.m. and 10:00 p.m.
- Plaintiff must mail and file an affidavit of mailing.
- Plaintiff must file an Affidavit of not found.
- Landlord must post and file an Affidavit of Posting with the Court.

## 2016 STATISTICS

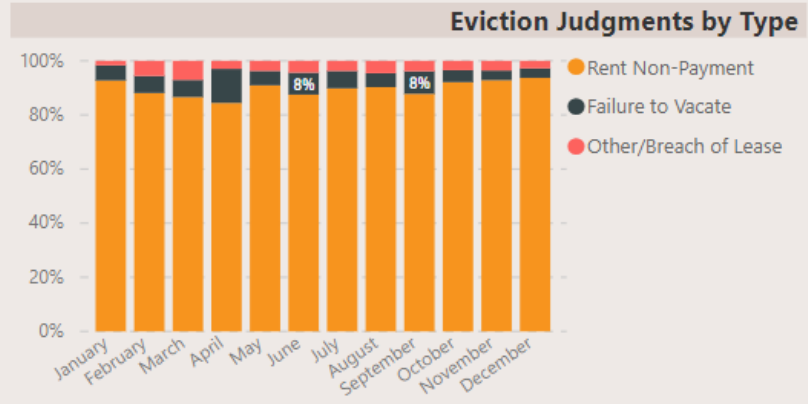
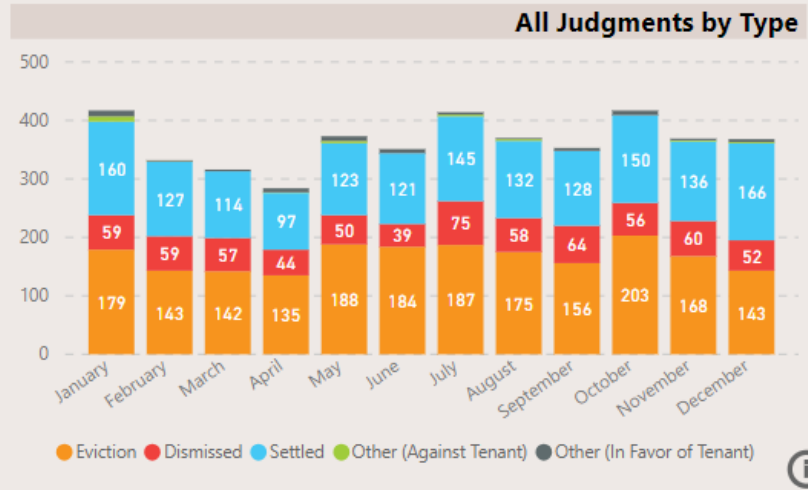
SOURCE: [EVICTIIONLAB.ORG](http://EVICTIIONLAB.ORG)

- Minnesota Statewide Eviction Filings: 13,622
- Minnesota Poverty Rate: 7.29
- Hennepin County Eviction Filings: 5,541
- Hennepin County Poverty Rate: 8.13%
- Minneapolis Eviction Filings: 2,883
- Minneapolis Poverty Rate: 15.39%

# HENNEPIN COUNTY DASHBOARD

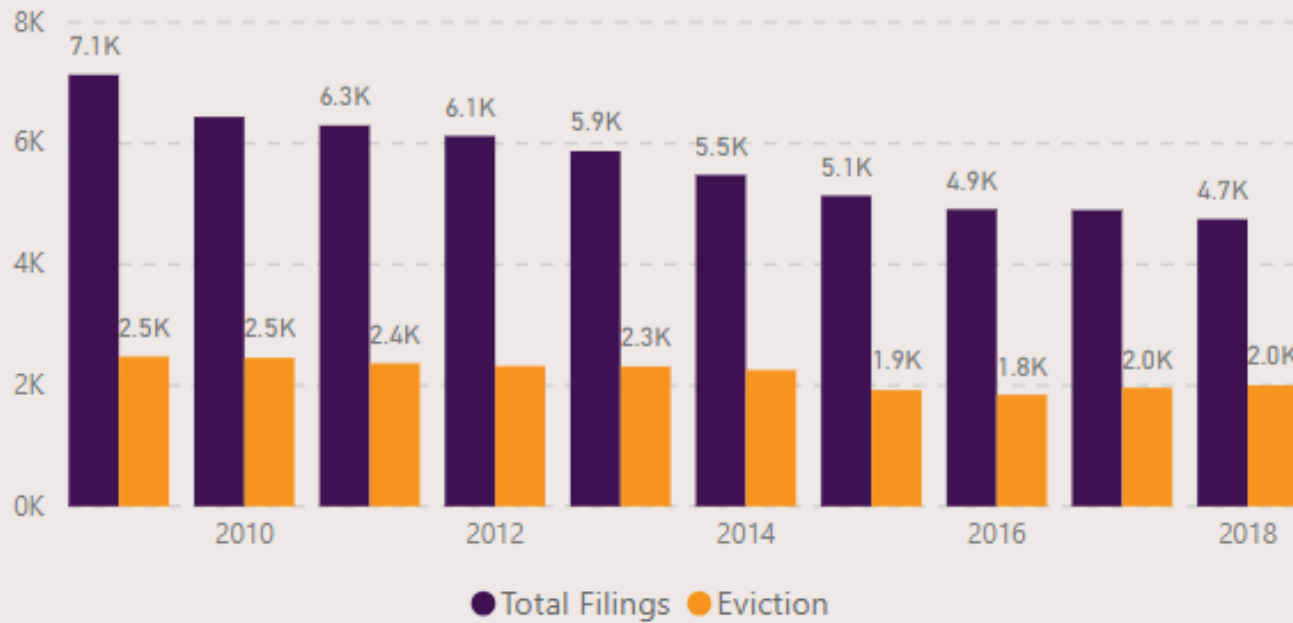
## 2018 DATA

### Housing Court Judgments

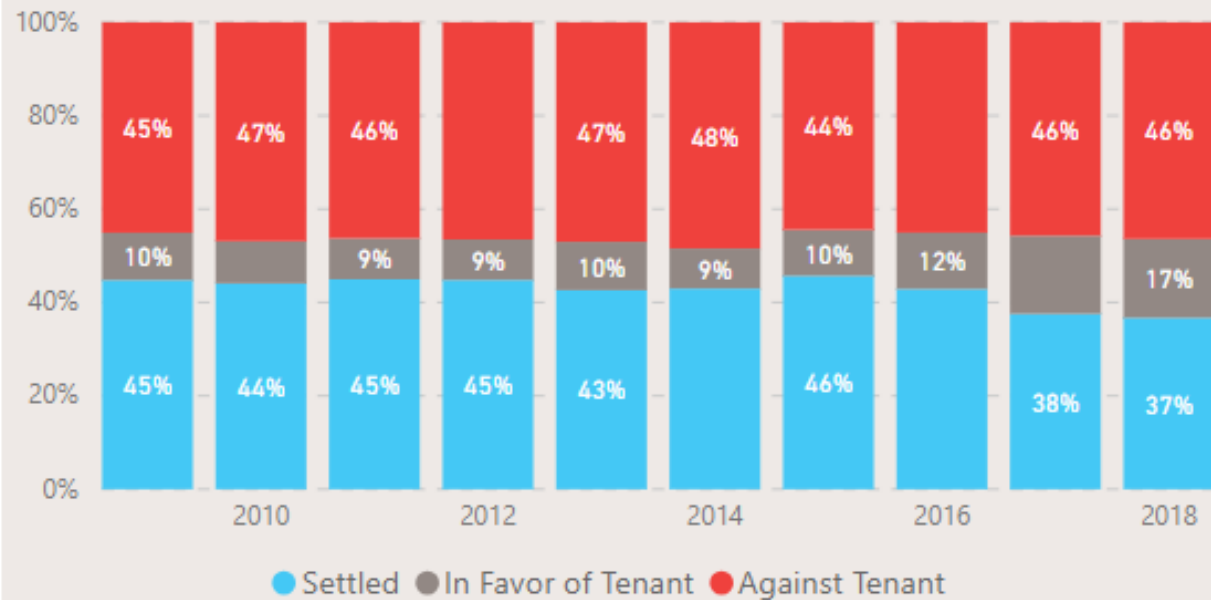


All numbers refer to individual cases.  
Dates for cases are when the case was first filed.

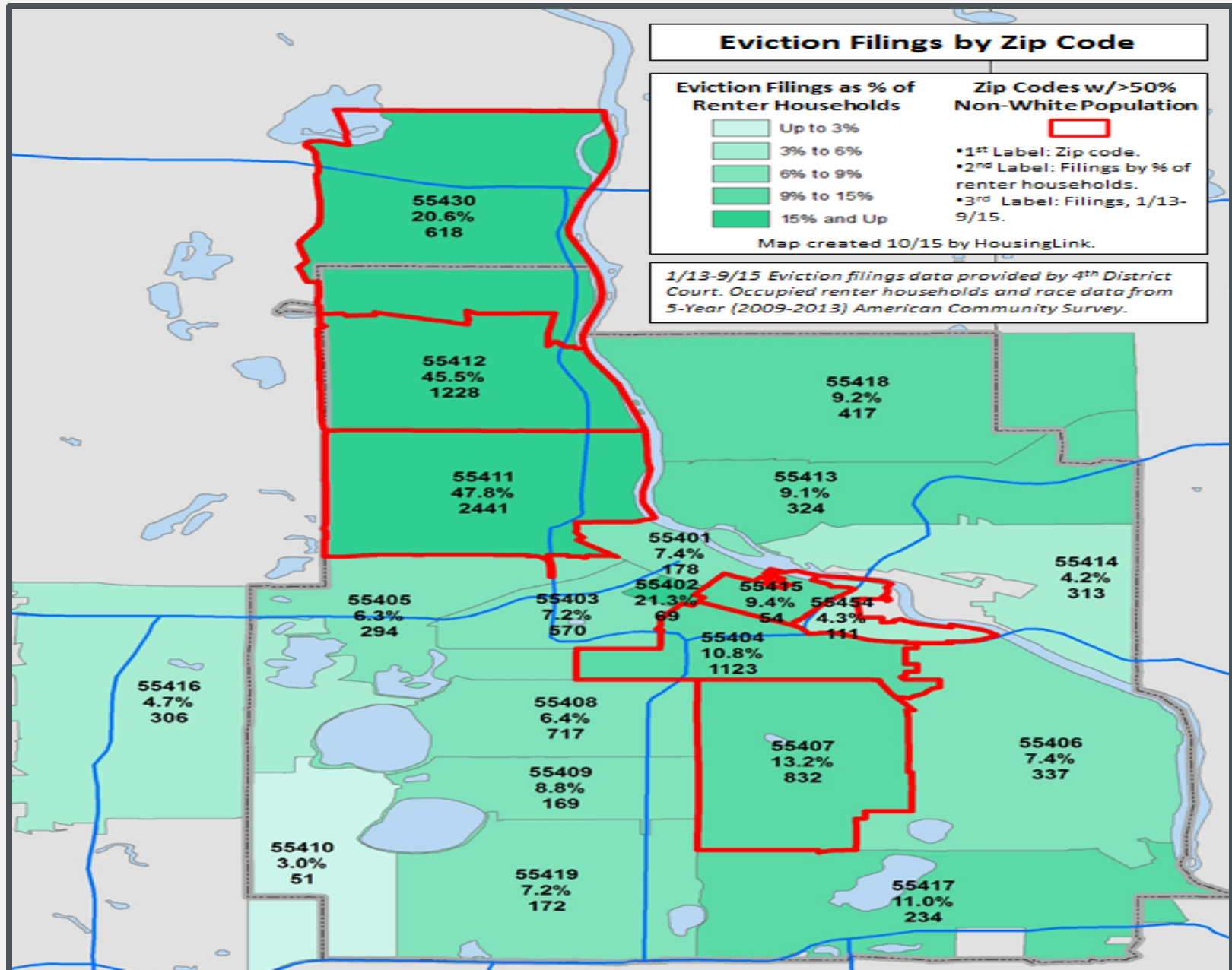
## Year over Year Filings and Evictions



## Ratio of Judgments For/Against Tenants



# Where Do Evictions Happen?





- In 2018, 42% of filings had an eviction judgment
- The actual amount of displacements is higher because the judgments do not necessarily include writs of recovery after violation of settlements agreements, tenants voluntarily leaving, informal displacements/removal
- Data will change as expungements are granted because court file is removed.

## EVICTION CONSEQUENCES

- Eviction results in forced displacement, contributing to instability within neighborhoods and potentially harmful effects for children, families, and individuals.
- Eviction ultimately results in persons becoming homeless but may also confer other consequences, such as substandard housing conditions, job loss, mental instability, interruption of education, illicit drug use, and material hardship
  - Unauthorized occupants
- 93% of all eviction filings in Minneapolis were due to non-payment of rent, and in the majority of cases, the defendant owed only \$2,000 in rent at the point of eviction (Minneapolis Innovation Team, 2016).
- Evictions are disproportionately located in economically disadvantaged areas with high concentrations of people of color. Approximately half of all eviction filings brought to court result in tenant displacement from the property.

## REPRESENTATION STATS

	Totals	Tenant Win	Landlord Win	Settlement	Redemption <sup>9</sup>
Unrepresented	219	24 (11%)	80 (37%)	111 (51%)	4 (2%)
Represented	100	21 (21%)	5 (5%)	74 (74%)	0 (0%)
Limited Representation	29	7 (24%)	4 (14%)	17 (59%)	1 (3%)

Fully represented tenants win or settle their cases 96 percent of the time. Clients receiving limited representation win or settle their cases 83 percent of the time. That figure falls to just 62 percent of tenants without any representation.

Source: *Bench & Bar of MN*, “In eviction proceedings, lawyers = better outcomes”, Feb. 5, 2019

# MEDIATION STATS

## Housing Court Mediation Statistics-Hennepin County

	Total Housing Cases	Cases Referred to Mediator	Cases Settled by Mediator	Percentage Referred to Mediator	Percentage Settled Using Mediator	Percentage of Housing Cases Referred to Mediator Settled Using Mediator
2015	6446	216	154	3.40%	2.40%	71.30%
2016	6266	264	162	4.20%	2.30%	61.36%
2017	6175	267	180	4.30%	2.90%	67.42%
9/2018	4521	217	132	4.80%	2.90%	60.83%
Total	23,408	964	628	4.12%	2.68%	65.15%

# TENANT COMMENCED ACTIONS



# Tenant Actions

Tenant Action	Notice Requirement	Who Can Serve the Action	How must Service be Completed	Hearing Time Limit
<b>Rent Escrow Minnesota Statute 504B.385</b>	Minn. Stat. §504B.385, subd. 5	The Court if under conciliation court jurisdictional limits (\$15,000)	Notice of the hearing may be mailed.	A hearing must be held within ten to 14 days from the day the action is filed.
<b>Emergency Tenant Remedy Minnesota Statute 504B.381</b>	Minn. Stat. §504B.381, subd. 5	The Petitioner	Personal Service pursuant to Minn. R. Civ. Pro. 4.03.  Service by Mail pursuant to Minn. R. Civ. Pro. 4.03.	The petitioner must attempt to notify the landlord, at least 24 hours before application to the court, of the petitioner's intent to seek emergency relief.  The Petitioner shall serve the order on the landlord personally or by mail <b>as soon as practicable.</b>
<b>Tenant Remedy Action Minnesota Statutes 504B.395 – 504B.471</b>	Minn. Stat. §504B.401, subd. 2	Any person not named a party to the action.	Personal Service pursuant to Minn. R. Civ. Pro. 4.03.  Certified Mail and Post pursuant to Minn. Stat. §504B.401 subd. 2	Not less than seven nor more than 14 days before the hearing
<b>Lockout Minnesota Statute 504B.375</b>	Minn. Stat. § 504B.375, subd. 1(e)	The Sheriff	Personal Service pursuant to Minn. R. Civ. Pro. 4.03.  Substitute service Minn. R. Civ. Pro. 4.03.	

# RENT ESCROW

## MINNESOTA STATUTE § 504B.385

- When can it be started?
  - When a violation as defined by Minnesota Statute § 504B.001, subdivision 14 exists.
    - (1) a violation of any state, county or city health, safety, housing, building, fire prevention, or housing maintenance code applicable to the building;
    - (2) a violation of any of the covenants set forth in section [504B.161, subdivision 1](#), clause (1) or (2), or in section [504B.171, subdivision 1](#); or
    - (3) a violation of an oral or written agreement, lease, or contract for the rental of a dwelling in a building.
- Who can bring it?
  - A residential tenant
- What can the Court do?
  - Order that all or a portion of the rent in escrow be used for repairs;
  - Order that rent be paid to with court as it becomes due to the landlord;
  - Rent abatement until the landlord remedies the violation;
  - Impose fines; and/or
  - For eviction counter claims order redemption as provided in Minnesota Statute § 504B.291.

# EMERGENCY TENANT REMEDY ACTION

MINNESOTA STATUTE § 504B.381

- When can it be started?
  - In cases of emergency involving the loss of running water, hot water, heat, electricity, sanitary facilities, or other essential services or facilities that the landlord is responsible for providing.
- Who can bring it?
  - A residential tenant;
  - any housing-related neighborhood organization with the written permission of a residential tenant; and
  - a housing-related neighborhood organization located within its geographical area of an unoccupied residential building with a violation; and/or
  - a state, county, or local department or authority, charged with code enforcement.
- What can the Court do?
  - Order the landlord to remedy the violation;
  - Order the tenant to remedy the violation and deduct the cost from the rent;
  - Appoint an administrator;
  - Order rent abatement;
  - The court may continue the jurisdiction over the residential building for a period of one year and order the landlord to maintain the residential building in compliance with all applicable housing maintenance codes.
  - Grant any other relief it deems just and proper, reasonable attorney fees not to exceed \$500.



# TENANT REMEDY ACTION

MINNESOTA STATUTES §§ 504B.395 – 504B.471

- When can it be started?
  - In cases where a housing code violation or defect in residential housing exists.
- Who can bring it?
  - A residential tenant; any housing-related neighborhood organization with the written permission of a residential tenant; and a housing-related neighborhood organization located within its geographical area of an unoccupied residential building with a violation; and/or a state, county, or local department or authority, charged with code enforcement.
- What can the Court do?
  - Order the landlord to remedy the violation;
  - Order the tenant to remedy the violation and deduct the cost from the rent;
  - Appoint an administrator;
  - Order rent abatement;
  - The court may continue the jurisdiction over the residential building for a period of one year and order the landlord to maintain the residential building in compliance with all applicable housing maintenance codes.
  - Grant any other relief it deems just and proper, reasonable attorney fees not to exceed \$500.

# LOCKOUT

MINNESOTA STATUTE § 504B.375

- When can it be started?
  - Actual or constructive removal or exclusion of a residential tenant which may include the termination of utilities or the removal of doors, windows, or locks.
- Who can bring it?
  - A residential tenant.
- What can the Court do?
  - Order the landlord to restore tenant to residential property
  - Treble damages and attorneys fees under Minn. Stat. § 504B.231.
  - A civil penalty of up to \$1,000.00, actual damages, and attorney fees per Minn. Stat. § 504B.271.

# CASE CAPTION CHANGES, CONFIDENTIALITY, & EXPUNGEMENTS

THE COURT MAY EXPUNGE THE RECORDS RELATING TO THE ACTION UNDER THE PROVISIONS OF SECTION 484.014 OR UNDER THE COURT'S INHERENT AUTHORITY AT THE TIME JUDGMENT IS ENTERED OR AFTER THAT TIME UPON MOTION OF THE DEFENDANT. MINN. STAT. §504B.345, SUBD. 1(C)(2)

# EXPUNGEMENT

MINNESOTA STATUTE § 484.014

MINNESOTA STATUTE §504B.345, Subd. 1(C)(2).

- An Eviction Action is on a tenants record at the time it is filed by the landlord.
- The only way to remove an Eviction Action is through the process of expungement.
- Landlords typically rely on tenant screening agencies to determine a renters qualifications.
- Tenant screening agencies gather Eviction records from the Court.
- Tenant are the person who can bring and expungement motion (request).
- Tenant must give landlord notice by providing a copy of the expungement motion to Landlord.

# STATUTORY AUTHORITY

## **484.014 HOUSING RECORDS; EXPUNGEMENT OF EVICTION INFORMATION.**

Subdivision 1. **Definitions.** For the purpose of this section, the following terms have the meanings given:

- (1) "expungement" means the removal of evidence of the court file's existence from the publicly accessible records;
- (2) "eviction case" means an action brought under sections [504B.281](#) to [504B.371](#); and
- (3) "court file" means the court file created when an eviction case is filed with the court.

Subd. 2. **Discretionary expungement.** The court may order expungement of an eviction case court file only upon motion of a defendant and decision by the court, if the court finds that the plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.

Subd. 3. **Mandatory expungement.** The court shall order expungement of an eviction case commenced solely on the grounds provided in section [504B.285, subdivision 1](#), clause (1), if the court finds that the defendant occupied real property that was subject to contract for deed cancellation or mortgage foreclosure and:

- (1) the time for contract cancellation or foreclosure redemption has expired and the defendant vacated the property prior to commencement of the eviction action; or
- (2) the defendant was a tenant during the contract cancellation or foreclosure redemption period and did not receive a notice under section [504B.285, subdivision 1a, 1b, or 1c](#), to vacate on a date prior to commencement of the eviction case.

# INHERENT AUTHORITY

- Courts have inherent authority to take an action when "the relief requested by the court or aggrieved party is necessary to the performance of the judicial function as contemplated in our state constitution. The test is not relative needs or judicial wants, but practical necessity in performing the judicial function."
- Courts have the inherent authority to control their own records and those of their agents, along with the equitable power to prevent unfairness to individuals.
- In order to determine if an inherent authority expungement is appropriate that Court must determine:
  - Whether expungement is necessary to the performance of a judicial function as contemplated in the Minnesota State Constitution; and where denial of a constitutional right is not involved;
  - Whether expungement will yield a benefit to the moving party commensurate with the disadvantages to the public from the elimination of the record and the burden on the court in issuing and enforcing the order.
    - See *State v. Ambaya*, 616 N.W.2d 256, 258 (Minn. 2000); *State v. C.A.*, 304 N.W.2d 353, 358 (Minn. 1981).
    - Guidance: *At Home Apts., LLC v. D.B.*, A18-0512 (Minn. Ct. App. Jan. 14, 2019) (unpublished).

# JUDGE REVIEW

- Authority: Minnesota Rule of General Practice Rule 611 and Minn. Stat. § 484.70.
- In all cases except conciliation court actions, a party not in default may seek judge review of a decision or sentence recommended by the referee by serving and filing a notice of review on the form prescribed by the court administrator.
- Standard of Review: The Referee's finding of fact shall not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01
- Parties may seek a judge review or appeal or both.
- An appeal must be taken within 15 days of entry of judgment.

## UPCOMING POTENTIAL LAW CHANGES

- Rule change to Minn. R. Gen. Prac. 603 regarding agents appearing on behalf of corporations, LLCs, and limited partnerships
- Legislation on when an eviction record becomes public



# RESOURCES

- Hennepin County Housing Court Website (Housing Court Project info)
  - <http://mncourts.gov/Find-Courts/Hennepin/HennepinHousingCourt.aspx>
- Self-Help Center
  - <http://mncourts.gov/Find-Courts/Hennepin.aspx#tab08SelfHelpCenter>
  - Hennepin Co. Govt. Center, 300 South 6th Street. Skyway Level, Minneapolis, MN 55487-0421
  - Phone: (651) 435-6535
  - In-Person Hours: Monday - Friday, 8 a.m. - 3:30 p.m.



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# QUESTIONS

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