

INSTRUCTIONS FOR EVICTION ACTION COMPLAINT

Minn. Stat. § 504B.321

Use the *Eviction Action Complaint* (form HOU102) to ask the Court to evict a tenant from residential or commercial rental property.

To evict a tenant, the landlord must have a valid reason for the eviction under Minnesota law, and the landlord must properly complete all the steps for the eviction, as required by Minnesota Statutes Chapter 504B and the Minnesota Rules of Civil Procedure. In Hennepin and Ramsey Counties, eviction cases are heard in “Housing Court” governed by General Rules of Practice for District Courts, Rules 601-612. There may be other legal requirements in City Ordinances, Minnesota Statutes and Rules, or Federal law affecting your eviction action.

Important Notices and Resource Information:

- The Court provides forms and instructions as a general guide to the court process. The instructions explain the steps and address common questions, but are not a comprehensive guide to the law.
- You are responsible for your own case. Court employees can provide general information on court rules, procedures and practices but are prohibited from giving legal advice.
- If you do not understand the forms and instructions, you may contact the Statewide Self Help Center at www.mncourts.gov/selfhelp or by calling 651-259-3888.
- If you are not sure if you should file court papers or if you have questions not addressed in the instructions, you should talk to a lawyer. For lawyer referral information see www.mncourts.gov/selfhelp/?page=252

Helpful materials may be found at your public county law library. For a directory, see <http://www.lawlibrary.state.mn.us/cllppubdir.rtf> . For more information, contact your court administrator or call the Minnesota State Law Library at 651-296-2775.

Forms

Forms are available at www.mncourts.gov/forms You will need:

- *Eviction Action Complaint* (HOU102)
- One or more *Affidavit of Service* forms to show how tenants were served with the Summons and Complaint
- *Summons* (prepared by court administration and given to you)
- *Power of Authority* (HOU103) if an agent is signing the Complaint or appearing in court instead of the Owner
- *Fee Waiver* (IFP101, IFP102 and IFP104) if you are low income and cannot afford to pay the court filing fee

Available Affidavit Forms:

- *Affidavit of Personal Service* (HOU106)

- *Affidavit of Plaintiff* (HOU110)
- *Affidavit of Service by Mail* (HOU108)
- *Affidavit of Not Found* (HOU109)
- *Affidavit of Service by Posting* (HOU111)

What You Need to Do

1. **Fill out the Eviction Complaint.**
2. **Sign the Eviction Complaint.**
3. **Make copies of the signed Eviction Complaint.**
4. **Bring the Complaint to the Court, pay the filing fee, and get the Summons.**
5. **Have someone (not you) serve a copy of the Complaint and Summons on each tenant.**
No later than 3 days before the court hearing, file proof with the Court that each tenant has been served.
6. **Go to the court hearing.** Each “step” is explained below in detail.

Step 1

Fill Out the *Eviction Action Complaint* (HOU102)

State of Minnesota

County **1**

District Court

Judicial District:	2
Court File Number:	3
Case Type:	Housing

Plaintiff (Landlord)

4

Address

vs.

Eviction Action Complaint (Minn. Stat. § 504B.321)

Defendant (Tenant)

5

Address

Tenant's Date of Birth: 6
(If known)

I, 7 state upon oath/affirmation:
(name of person signing complaint)

1. In the upper left corner, fill in the county where the property is located.
2. In the upper right corner, fill in the Judicial District number.
3. Leave the Case Number blank for now.

4. On the line marked "Plaintiff," write the name and address of the property owner (or the person entitled to possession). Plaintiff is a person, or the legal entity that is the owner (corporation, partnership, or sole proprietor) or a court appointed receiver or fiduciary.
 - If business is conducted using an assumed name, list the owner's name followed by the assumed name. *Example: John Jones, doing business as Lakeview Apartments.* Note: MN Statutes §333.01 requires a commercial business to file a certificate of assumed name with the MN Secretary of State before conducting business using the assumed name.
 - A property management company or property manager that does not own the property should not be listed as the Plaintiff.
 - If there are co-owners, such as a husband and wife, you may list one or both as Plaintiffs.
 - If you have questions about who to list as Plaintiff, read MN Statutes Chapter 504B or ask a lawyer for advice.
5. On the line marked "Defendant," write the name and address of each tenant. Include all adults on the lease, and any other adults known to be living there. If unknown persons are living there, you can list "John Doe" or "Mary Roe" in addition to the known persons.
6. Write the birth date of each adult tenant, if known.
7. On this blank line, fill in the name of the person signing the *Eviction Action Complaint* (owner, or owner's agent with power of authority, or owner's attorney.) This person must have knowledge of the facts and be willing to affirm that the information in the *Complaint* is true. If the person signing the *Complaint* is the owner's agent, use this format: "*Mary Smith, agent for John Jones*". If the person is signing on behalf of a business entity, make that clear by using this format: "*Mary Smith, partner of ABC Partnership*" or "*Mary Smith, sole proprietor of ABC Rentals.*"

If an agent is signing the *Complaint*, attach a "Power of Authority" to the *Complaint* before filing the *Complaint* with the Court. A "Power of Authority" is signed by the owner, and states who is authorized to do what on the owner's behalf. Court Form HOU103 can be used to grant power of authority.

Paragraph 1

1. Landlord leased or rented to tenant(s) on 1 by an ORAL WRITTEN agreement the premises at: 2 Apartment # , and 3 garage YES NO, in the city of 4, the state of Minnesota, zip code , in the county of . The agreement was from 5 to . The current rent due and payable under this agreement each month is \$ 6 due on the 7 day of the month.

1. Fill in the month and the year the landlord leased or rented to the tenant.
Check whether it is an ORAL or WRITTEN lease.
2. Fill in the complete address of the property, including the apartment number. If the unit is a duplex without apartment numbers, write “upstairs” or “downstairs.”
3. If a garage is included, check YES. If not, check NO.
4. Fill in the city in which the property is located, the zip code and county.
5. Fill in the date the rental agreement started, and when it ends. If you have a month to month rental agreement, write “month to month” on the blank line after “from”.
6. Fill in the dollar amount for one month’s rent.
7. Fill in the day of the month that the rent is due.

Is Your Situation Different? The *Eviction Action Complaint* form is designed for use in the typical situation where tenant agrees to pay rent each month to landlord. An Eviction Action can also be filed if there is an agreement for an exchange of services instead of rent, or if unlawful activities are occurring at the property. For other situations, consult a lawyer for advice on the appropriate legal remedy.

Paragraph 2

2. The landlord of the premises described above is 1.

1. Write the name of the landlord. This should be the same as the Plaintiff.
For a definition of “Landlord” see MN Statutes §504B.001, Subd.7.

Paragraph 3

3. Landlord having present right of possession of said property, has complied with Minn. Stat. §504B.181 by:
 - a. disclosing to the tenant either in the rental agreement or otherwise in writing prior to beginning of the tenancy the name and address of:
 - i. the person authorized to manage the property AND
 - ii. a landlord or agent authorized by the landlord to accept service of process and receive and give receipt for notices and demands, AND
 - b. posting in a conspicuous place on the property a printed or typewritten notice containing the above information
1
Where Posted
 - c. the above information was known by the tenant not less than 30 days before the filing of this action because:
2

1. Paragraph 3 applies to residential property only (not commercial leases) where there is an agreement to pay rent.

Before the tenant moves in and pays rent, landlord must give tenant certain

information in writing AND post the information on the property. Read Paragraphs 3 (a) and (b). If both are true, check both boxes and fill in the line at (b) explaining where the information was posted.

2. If A and B are not true, check box (c) and explain how tenant knew this information at least 30 days ago.

You cannot file an eviction unless A and B are true, or C is true. See MN Statutes §504B.181, Subd.4. If If you have not done so, provide the tenant with the required information in writing now, and talk to a lawyer for advice.

Paragraph 4 Select one or more reasons for the eviction.

4. Landlord seeks to have the tenant evicted for the following reasons:

- a. The tenant is still in possession of above premises and has failed to pay rent for the month(s) of 1 in the amount of \$2 per month payable on the 3 day of each month for a total due of \$4.
- b. The tenant has failed to vacate property after tenant was given gave written notice to do so. This notice was served on Tenant Landlord on 5 and tenant Was Told Gave notice to vacate the property by 6.
- c. The tenant has broken the terms of the rental agreement with property landlord by: (be specific) 7
- d. The tenant has breached the covenants set forth in Minn. Stat. §504B.171 by: (be specific) 8

Check box A if the reason for the eviction is that tenant did not pay the rent.

1. State which months are unpaid (such as Jan, Feb)
2. State the amount of rent that is unpaid per month (such as \$500 for Jan, and \$900 for Feb.)
3. Fill in the day of the month when rental payments are due.
4. Fill in the total rent owed at the time the Complaint is signed.

Tenant can Redeem: If the only reason for filing the eviction action is nonpayment of rent, the tenant can “redeem” (pay and stay). The tenant can stay if he brings to the court hearing the amount of rent that is past due (plus interest), the costs of the court action, and an attorney’s fee (not greater than \$5), and performs any other covenants (agreements) of the lease. If the rent is paid by the day of court, the Judge can give the tenant up to 7 additional days to pay the costs. See [MN Statutes § 504B.291](#), Subd. 1. For purposes of “pay and stay” court costs include only the court filing fee and reasonable service of process fees. Court costs do not include management fees, or fees paid to an agent. If the total amount due on the *Complaint* includes utilities or late fees, the Judge will decide if these amounts must be paid by the tenant to “pay and stay.”

Check box B if tenant failed to move after notice to move was given.

5. Check the boxes to show if landlord asked tenant to move out, or if tenant told landlord he would be moving out. Enter the date the notice to move was given.
6. Enter the date the tenant was supposed to move out.

If landlord asked tenant to move, a copy of the letter telling tenant to move out should be attached to the *Complaint*.

Common Problems with evictions for failure to move out :

Improper Notice to Vacate: In general, a full rental period's notice must be given.

If you have a written lease, read the lease to see if some other notice period is required. If the property was foreclosed, other notice periods may apply. Improper notice will result in the eviction case being dismissed. Ask a lawyer for more specific advice.

Example 1: If rent is due on the 1st of the month and you want tenant to move out by March 1, you must deliver the notice to vacate on or before January 31.

Example 2: If you give tenant a notice to vacate letter on April 10, the earliest date the notice can tell the tenant to leave is May 31 so you have given notice of a full rental period (the month of May)

Filing the Eviction Action Complaint before the vacate date: If tenant was asked to move out by January 1, do not file the *Complaint* until after January 1, even if the court date will be after January 1. The tenant must be in violation of the request to move out at the time you file the *Complaint*. If the tenant tells the landlord she does not intend to move out by January 1, landlord still must wait until after the vacate date to file the *Complaint*.

Waiting to File if tenant fails to pay rent: Generally, if tenant gives or is given a notice to move out, tenant still must pay rent through the move out date. An exception to this rule is if the lease allows tenant to apply a damage deposit as the last month's rent, or a specific law allows it, such as with mortgage foreclosures. If tenant must pay the last month's rent and does not pay by the due date, landlord can file an Eviction for non-payment of rent. Landlord does not have to wait until tenant fails to move out per the Notice to Vacate. Failure to pay rent creates a separate reason to file for eviction.

Check box C if tenant violated the rental agreement (for something other than not paying rent.)

7. Describe the dates and specific details of how the tenant broke the terms of the rental agreement. The breach of lease should be material (not insignificant.)

A copy of the lease should be attached to the *Complaint*.

NOTE: Read [MN Statute § 504B.115](#) to see if you are required to give the tenant a copy of the written lease before filing an eviction action.

Check box D if the tenant has violated MN Statute §504B.171 (drugs, prostitution, guns, stolen property at the rental property)

8. Read the statute before deciding if this applies. You must be specific about the alleged unlawful activities. Attach a copy of any police report(s) to the *Complaint*.

Step 2

Sign the *Eviction Action Complaint*

Fill in the “Verification and Affidavit of Non-Military Status” and sign the *Complaint* under penalty of perjury. By signing the *Complaint* under penalty of perjury, you are stating that the information in the document is true to the best of your knowledge. Perjury is the crime of intentionally lying or misrepresenting the truth. *Print* your name and fill in your address, city, state, zip, daytime phone number, and e-mail address. E-mail addresses are required if documents are served or filed using electronic means. The *Complaint* can be signed by the owner, the owner’s authorized agent (attach agent’s Power of Authority to the *Complaint*), a licensed attorney, or the person entitled to possession. If the owner is a corporation or limited liability company, an attorney must sign the *Complaint* and appear in court with the owner or owner’s agent, except in Hennepin County Housing Court. See Step 6 for further information on attorneys.

If the tenant is in the military, special laws apply. Ask a lawyer what to do before signing. “The Verification and Affidavit” that is part of the signature includes a statement that tenant is not in the military. You cannot truthfully sign this if the tenant is in the military.

Step 3

Make Copies of the *Eviction Action Complaint*

Make one photocopy of the signed *Complaint* with attachments, if any, for each Defendant (tenant) named in the *Complaint*. Make one additional photocopy for yourself.

Step 4

Bring the *Eviction Action Complaint* to the Court Administrator

File the following documents with the Court Administrator:

- The *Eviction Action Complaint*, and any attachments such as a copy of the written lease, a copy of the Notice to Vacate, Power of Authority, or police report.
- Pay the court [filing fee](#) . If you are low income and cannot afford to pay the filing fee, you can use Form IFP102 and IFP104 to request that a judge waive the fee. Court administration cannot accept your *Complaint* for filing without the fee or an Order waiving the fee.
- **Interpreter Needed?** If you need an interpreter at the hearing, notify court administration when you file. If you think your tenant needs an interpreter, consider asking the tenant to

call court administration. Generally 48 hours (2 full days) notice is needed, excluding weekends and holidays. Less notice can result in delay or rescheduling the hearing.

The Court will prepare a **Summons**. A *Summons* is a written notice telling the defendant/tenant that a legal action has been filed and will be heard in court on a specific day. It also states that if the Defendant disagrees with the action or wants to tell a different side of the story, s/he must appear in court at the time of the hearing.

You will need a copy of the *Summons* for each Defendant/Tenant.

Step 5

Serve the *Summons* and *Eviction Action Complaint* on the Defendant/Tenant

- You (the plaintiff) **cannot be the person who serves the *Summons* and *Complaint***. If you gave Power of Authority to an agent, do not ask the agent to serve the papers. It is best not to ask the building manager to serve papers. Use a neutral person who is over the age of 18, or pay a service of process agency or the Sheriff to serve the papers.
- Service of the *Summons* and *Complaint* must be completed at least 7 days before the hearing date. *Example: If court is on Friday, the last day to serve is Friday of the prior week.*
- A *Summons* and *Complaint* cannot be served on a legal holiday.
- Each named defendant must be served. *For example, if there are 3 tenants, each tenant must be served with a separate copy of the *Summons* and *Complaint*. If there is a husband and wife and 2 children, the husband and wife must each be served with a separate copy of the *Summons* and *Complaint*. Minor children should not be named as defendants or served.*
- A separate *Affidavit of Service* **for each defendant/tenant** must be filed with the Court at least 3 working days before the court hearing. **There is more information about the *Affidavit of Service* below.**
- *If Section 8 is involved*, the contract between the landlord and the Housing Authority may require the landlord to serve a copy of the *Summons* and *Complaint* on the Housing Authority at the same time the papers are served on each tenant(s).

PERSONAL SERVICE OF THE SUMMONS & COMPLAINT

Personal Service:

An adult who is not involved with the case may act as the server and may hand the *Summons* and *Complaint* directly to the defendant at least seven days before the court date.

Substitute Service:

An adult who is not involved with the case may “serve” the *Summons* and *Complaint* by leaving a copy of the documents with a responsible person who lives with the Defendant. This person is then responsible for delivering the *Summons* and *Complaint* to the Defendant. *Example: Joe and John are adult roommates. If only Joe is home, the*



server can leave 2 copies of the Summons and Complaint with Joe, one for Joe and one for John.

The server completes one *Affidavit of Service* for each defendant. The server must sign the *Affidavit of Service* under penalty of perjury. Perjury is the crime of intentionally lying or misrepresenting the truth. The *Affidavits of Service* are your proof that you had the Defendant(s) served. **File the completed *Affidavits* with the court at least 3 working days before the hearing.**



It is always best if the Defendant is personally served with the *Summons* and *Complaint*. However, if you cannot find the Defendant, you may be able to have Defendant served in another way called *mailing and posting*.

MAILING AND POSTING of the SUMMONS & COMPLAINT

Use this method of service when:

- 1. Defendant(s) cannot be found in the county
AND
- 2. Personal or substitute service has been tried at least twice on different days with at least one of the attempts at service made between 6 and 10 p.m.

If the property is commercial instead of residential, the attempts to serve are not required. Instead, there must be proof that the commercial property is not occupied.

See the form [Instructions – Service by Mail and Post \(HOU107\)](#) for instructions on using this form of service.

**Step 6
Go to the Hearing**

The Plaintiff, the Plaintiff’s attorney, or the Plaintiff’s agent with power of authority, must attend the hearing.

If the Plaintiff is a corporation or a limited liability company, Plaintiff must have an attorney in court. There is one exception to this rule. In Hennepin County, an officer or agent with power of authority may appear and represent the corporation without a lawyer, in Housing Court. If a decision is appealed to a judge or appellate court, an attorney will be required.

Many eviction cases settle at court. The landlord and tenant should try to work out an agreement. In some counties, if a trial with witnesses and evidence is needed, the trial will be scheduled for a separate date. In other counties, you may be expected to have your witnesses ready at the first hearing date. For more information about what to expect at an eviction

hearing, contact court administration for the county where you are filing, and/or look at the court's website at www.mncourts.gov and then select your District/County.

Other Information	
Requesting an Interpreter	If you need interpreter services for the hearing, call court administration right away. The court generally needs 48 hours notice (2 full days), excluding weekends and holidays, to provide an interpreter.
Expedited Hearing	If tenant's behavior is seriously endangering the property or safety of other residents or the owner, landlord can request that the eviction court date be scheduled within 5 to 7 days, rather than 7 to 14 days. An additional affidavit is required, and a judge must pre-approve the request before court administration sets the date. Landlord can be fined up to \$500 for abuse of the expedited hearing process. See MN Statutes §504B.321 Subd.2 .
Collecting the Rent	An eviction action decides if the tenant must move. It does not include a judgment for rent or other money owed. Claims for rent and other money issues that are less than \$10,000 can be brought in Conciliation Court. Claims over \$10,000 must be filed in District Court.
Eviction Notice (Writ of Recovery of Premises and Order to Vacate)	A "Writ of Recovery of Premises and Order to Vacate" is a legal notice ordering the defendant(s) to move and authorizing the sheriff to take certain actions if tenant does not move voluntarily. It is issued by the court if the landlord wins an eviction action in court, the landlord asks for the Writ, and pays a Writ fee . Landlord takes the Writ to the sheriff. If the sheriff cannot find the tenants to serve the Writ, the sheriff may post it in a noticeable place at the property. The tenant has 24 hours to remove all property and turn in keys. If the defendant disobeys the notice, landlord may contact the sheriff to schedule a "move out" time. For more information, read MN Statute § 504B.365 (Unlawful exclusion or removal; action for recovery of possession).

Tenant's Personal Property	<p>MN Statute § 504B.271 covers what the landlord can do with property a tenant leaves behind after moving out. For more information, see links to booklets published by the Attorney General and other agencies, at www.mncourts.gov/selfhelp/?page=415</p>
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