



Tip of the Month May 2011 Post-Eviction Process

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A common question at the Housing Court Project is, “What happens next?” When a landlord prevails in an eviction action, the referee will authorize issuance of a Writ of Recovery of Premises and Order to Vacate. If the tenant does not leave within the time period specified by the referee, the landlord must obtain the writ and have it executed in order to remove the tenant and the tenant’s property from the premises.

The Hennepin County Sheriff provides a writ checklist, available by request from the clerks at the Housing Court counter at the Government Center. Pro bono attorneys can view a recording of the recent webinar “Landlord-Tenant Post-Eviction Issues,” presented by Robin Ann Williams of Bassford Remele, in the Projusticemn.org Civil Law library.

Obtaining the Writ

The writ directs the sheriff to compel the tenant to vacate the premises. In order to use the sheriff’s services, the landlord will have to take the court’s order for a writ to the court administrator and pay a fee to obtain a writ. The fee is established by Minn. Stat. § 357.021 subd. 2 (5), and is currently \$55. The landlord can then take the writ to an “officer” to execute the writ. An “officer” can include the sheriff, a licensed police officer, or a community crime prevention licensed police officer.

Practice Tip: If the landlord is proceeding in forma pauperis, the court may waive the fees pursuant to Minn. Stat. § 563.01 subd. 4, which states, “Upon order of the court, the court administrator and the sheriff of any Minnesota county shall perform their duties without charge to the person proceeding in forma pauperis. . . .”

Execution of the Writ

Minn. Stat. § 504B.365 governs execution of the writ.

Service of Notice to Vacate. The sheriff must attempt to serve notice personally, and if the sheriff cannot serve the notice personally, he or she may post it in a noticeable place within the location described in the writ. The notice will demand that the defendant or any other person in charge of the premises relinquish possession and leave within 24 hours, taking all people and personal property from the premises.

Practice Tip: The sheriff’s office may be able to serve the notice to vacate as soon as the next day. Tenants who need more time to move than the court order specified should try to make arrangements with the landlord not to obtain the writ, or ask the landlord to agree not to take the writ to the sheriff until a certain date.

Notice of Forcible Removal. If, after 24 hours, the tenant has not vacated the premises, the sheriff may execute the writ and forcibly remove the people and property from the premises. After the notice is posted and 24 hours have expired, the landlord schedules enforcement of the

writ with the sheriff. The landlord must provide notice of the date and approximate time scheduled for the move-out to the tenant by first class mail, mailed as soon as the date and time are set, and must make a good faith attempt to reach the tenant by telephone. The notice must inform the tenant that the tenant and all personal property will be removed from the premises if the tenant has not vacated the premises by the time specified in the notice.

Practice Tip: The sheriffs' offices in Hennepin and Ramsey Counties are currently able to enforce a move-out within 24-48 hours of scheduling. Sheriffs typically do not perform move-outs on weekends. Tenants should not assume there will be delays when making arrangements to vacate the premises.

Forcible Removal. Minnesota Statute § 504B.365, subd. 1(b) states, "If the defendant fails to comply with the demand, then the officer shall bring, if necessary, the force of the county and any necessary assistance, at the cost of the plaintiff. The officer shall remove the defendant, family, and all personal property from the premises and place the plaintiff in possession." If the tenant is not in the premises, but the tenant's property is, depending upon where the landlord will be storing the tenant's property, the sheriff will supervise the landlord's removal of the property.

Practice Tip: If the tenant is not in the premises, the landlord may contact a commercial mover to move the property into storage under the sheriff's supervision. Landlords should take photographic inventories to avoid disputes.

Stopping Execution of the Writ

Even if a writ has issued, a tenant may still be able to intervene to prevent its execution.

Motion to Quash the Writ. If the tenant has a strong reason why the writ should not be executed, the tenant may be able to have the writ quashed. Minnesota Rule of Civil Procedure 60.02 provides the grounds for relief from a judgment or order. The most common ground cited is that the order was the result of mistake, inadvertence, surprise, or excusable neglect. However, this is not an easy standard to meet. See *Hinz v. Northland Milk & Ice Cream Co.*, 53 N.W.2d 454, 455-56 (Minn. 1952). The court will consider:

- Does the tenant have a reasonable defense on the merits?
- Did the tenant exercise due diligence after notice of the entry of judgment?
- Did the tenant have a reasonable excuse for not attending the hearing, not complying with the settlement agreement, etc.?
- Will the landlord be substantially prejudiced by granting the motion?

Appeal. If a tenant notifies the court of the tenant's intention to appeal the judgment, the court must issue an order staying the writ for at least 24 hours after judgment, with certain exceptions. Minn. Stat. § 504B.371 subd. 1. If the tenant is in possession of the property, the tenant must give an appeal bond.

Amicable Agreement. Perhaps the best method of intervening with the execution of the writ is for the landlord and tenant to agree to a move-out date. The landlord may hold on to the writ, preserving his or her ability to execute it for up to 30 days. An agreement can give the tenant more time to make arrangements to move out and will save the landlord the costs of obtaining and executing the writ. For the protection of both parties, this agreement should be in writing.