

Harassment, Protection Order and Lease Violations: New Strategies for Landlords

2012 Aging Services of Minnesota Institute

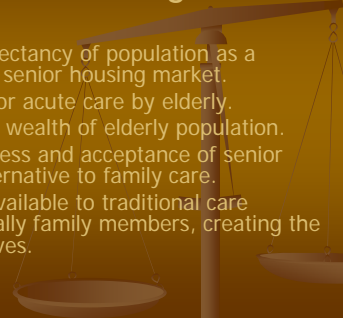
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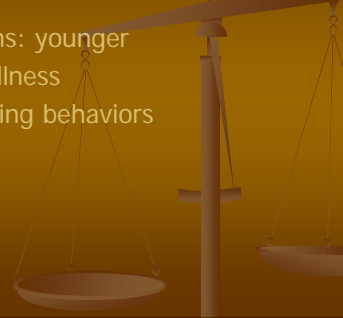
Changing Demographics of Senior Housing

- Increased life expectancy of population as a whole, and of the senior housing market.
- Decreased need for acute care by elderly.
- Increased relative wealth of elderly population.
- Increased awareness and acceptance of senior housing as an alternative to family care.
- Decreased time available to traditional care providers, principally family members, creating the need for alternatives.



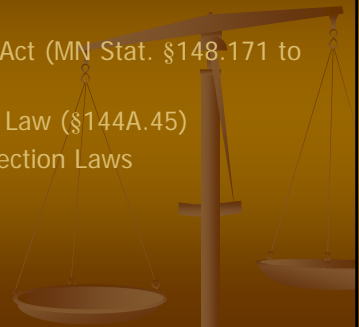
Changing Demographics

- New populations: younger
- ...with mental illness
- ...with challenging behaviors



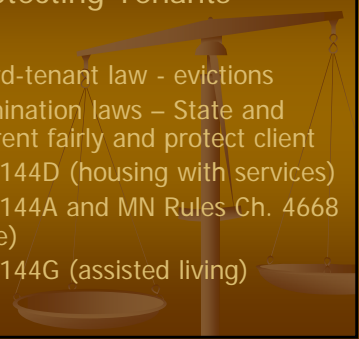
Laws Protecting HWS and Home Care Clients

- Nurse Practice Act (MN Stat. §148.171 to §148.285)
- Dementia Care Law (§144A.45)
- Consumer Protection Laws



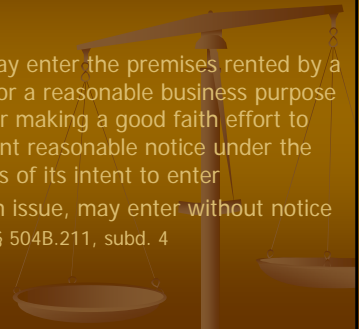
Laws Impacting HWS and Home Care Providers and Protecting Tenants

- MN landlord-tenant law - evictions
- Nondiscrimination laws – State and Federal – rent fairly and protect client
- MN Stat. §144D (housing with services)
- MN Stat. §144A and MN Rules Ch. 4668 (home care)
- MN Stat. §144G (assisted living)



Problem Tenant? Landlord's Access to Unit

- A landlord may enter the premises rented by a tenant only for a reasonable business purpose and only after making a good faith effort to give the tenant reasonable notice under the circumstances of its intent to enter
- If safety is an issue, may enter without notice
 - Minn. Stat. § 504B.211, subd. 4



APPLICABLE NONDISCRIMINATION LAWS

- §504 of the Rehabilitation Act
- Fair Housing Amendments Act
- Americans with Disabilities Act
- Minnesota Human Rights Act
- Local Ordinances
- You can discriminate against predatory offenders

Nondiscrimination Laws

- Criteria that screen out or tend to screen out individuals with disabilities may be used only if necessary for provision of services being offered
- HWS providers are not required to provide services to those who pose a direct threat to the health or safety of others
 - ADA defines "direct threat" as significant risk to health or safety of others that cannot be eliminated by reasonable accommodation

Nondiscrimination Laws

- Exceptions to Reasonable Accommodation:
 - Providers do not have to fundamentally alter the nature of their programs
 - Providers do not have to bear an undue financial or administrative burden

Who will accuse the Provider of discrimination?

Enforcement Mechanisms:

- Family - Informal resolution with housing provider
- Public housing authority grievance procedure
- Minnesota Housing Finance Agency
- HUD
- Local civil rights agencies/commissions

BE PROACTIVE

- Have a flexible housing agreement
- Have a clear services agreement
- Discuss the service level issues upfront
- Set expectations early

Housing with Services Contract Checklist

- Building's name and mailing address
- Owner's name and mailing address
- Managing agent's name and mailing address
- Name and address of Owner's authorized agent
- Registration and licensure status
- Name of providers providing health-related and/or supportive services pursuant to contract

Housing with Services Contract Checklist

- Term of contract
- Description of basic services offered
- Description and cost of additional services offered
- Method by which contract may be modified
- Explanation of complaint resolution process, including toll-free number of Ombudsman's office
- Name of tenant's designated representative

Housing with Services Contract Checklist

- Explanation of referral procedures
- Residency requirements
- Procedures for billing and payment
- Statement regarding outside service providers
- Statement regarding availability of public funds for payment of rent and/or services
- Statement regarding availability of and contact information for long-term care consultation services

Harassment Issues

- Tenant is harassing other tenants
- OR
- Visitor/family member of Tenant harassing
 - Tenant or
 - Other Tenants

What can you do?

What is Harassment?

- Know when it happens.
- Don't doubt yourself – you are not overly sensitive.

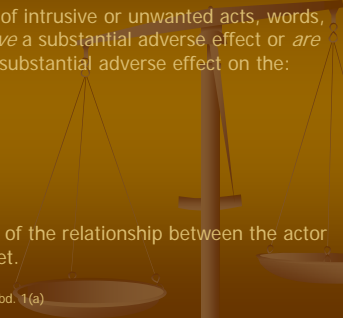


Harassment is:

- a single incident of physical or sexual assault;
- **OR**
- Repeated incidents of intrusive or unwanted acts, words, or gestures that *have* a substantial adverse effect or *are intended to have* a substantial adverse effect on the:
 - Safety;
- OR**
- Security;
- OR**
- Privacy

of another, regardless of the relationship between the actor and the intended target.

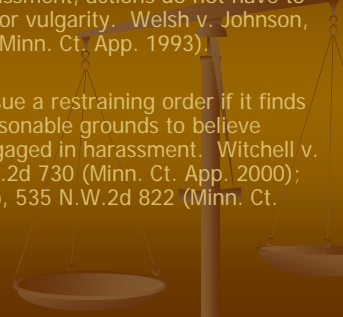
- Minn. Stat. § 609.748 subd. 1(a)



Harassment is:


(continued)

- To constitute harassment, actions do not have to involve obscenity or vulgarity. *Welsh v. Johnson*, 508 N.W.2d 212 (Minn. Ct. App. 1993).
- The Court may issue a restraining order if it finds that there are reasonable grounds to believe aggressor has engaged in harassment. *Witchell v. Witchell*, 606 N.W.2d 730 (Minn. Ct. App. 2000); *Davidson v. Webb*, 535 N.W.2d 822 (Minn. Ct. App. 1995).



Family and Tenant Related Behaviors

- Manipulative
- Attention-seeking
- Dangerous
- Mental Health services



Prevention and Management Strategies for the Landlord

- Physical Security
- Workplace Policies and Procedures
- Policies and Procedures for Crisis Management
- Civil Legal Remedies Involving Temporary Restraining/harassment Orders
- Minnesota's Anti-Stalking Law



So I have harassment...

What do I do?



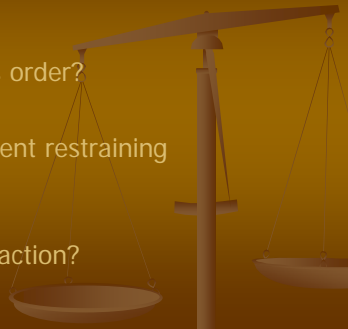
What do I do?

- Communicate, communicate, communicate...
- Document, document, document...
- Negotiate, negotiate, negotiate...



What if this doesn't work?

- Trespass order?
- Harassment restraining order?
- Eviction action?



How do I obtain a trespass order?

- Gather your facts.
- Not available everywhere – it depends on the city/municipality.
- Call your local law enforcement.



Harassment Restraining Order

- (See Sample in Packet)
- Fear of harm
- Specific examples of behavior
- Court requirements vary by Judge

How do I obtain a harassment restraining order?

- Gather your facts.
- Be reasonable and accommodating.
- Prepare and file a petition and supporting affidavits.
- Order for Relief (Temporary?).
- Service issues.
- Hearing Date.
- Mediation?
- Discovery?
- Be reasonable and accommodating.

How do I obtain a harassment restraining order?

- Prepare your evidence.
 - Witnesses.
 - Documents.
- Hearing.
- Trial.
- Still be reasonable and accommodating.
- "Permanent" Order.

What happens now?

- Protect your tenants.
- Protect your staff.
- Cool-down period.
- Establish ground rules.
- Setting the Tone.
- Peace and quiet?
- Legal consequences.



Why is this important to know?

- Protect your tenants, who by their nature are vulnerable adults.
- Protect your staff.
- Balancing one tenant's rights with rights of all tenants.



Eviction Action



Eviction Action

- Lease violation – what's in your Lease?
 - Terminate lease if tenant or tenant poses a direct threat to the health or safety of others

Removal from Property

- No force allowed
- Peaceful recovery
- Physical removal by sheriff

- Nonpayment and lease violations can be pursued simultaneously

DEFENSES TO EVICTION ACTIONS

1. Retaliation or penalty for enforcing rights under lease or under Federal or State Law

2. Retaliation or penalty for tenant's good faith report to a governmental authority of the landlord's violation of any health, safety, housing or building codes or ordinances







Eviction

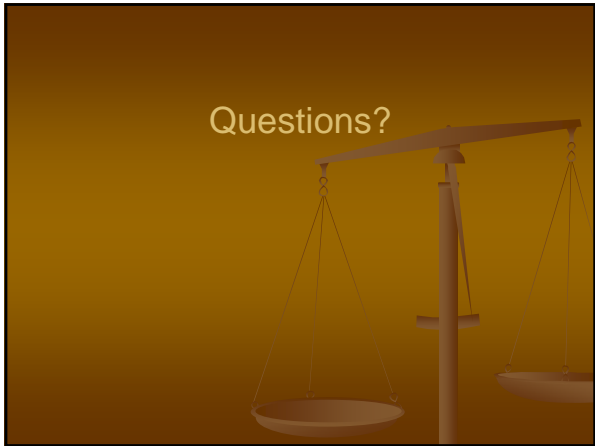
- The Court must hear the eviction action within 7-14 days from date of Summons.
- If no material violation of lease has occurred but rent is due, a tenant has up to (7) additional days to pay the outstanding rent.

Eviction Action

- Tenant has the right to Answer.
- Court date is set.
 - At housing court, mediation may occur.
 - If tenant does not appear, court renders in favor of landlord and a writ of restitution issues.
 - If tenant appears and does not contest, court may issue a writ within 7 days.
 - If tenant appears and contests the eviction, the court schedules trial.

What happens next?

- Landlord obtains the writ and has writ properly served on tenant.
- Tenant has 24 hours to vacate premises.
- If tenant fails to vacate, sheriff will physically remove tenant.



Questions?



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Trespass Notice Form

YOU ARE HEREBY REQUESTED TO DEPART FROM THIS LAND AND NOT TO RETURN FOR ONE YEAR.

State and local laws (Minn. Stat. § 609.605 and/or Mpls. Code § 385.380) provide that no person shall intentionally trespass on the land of another and refuse to depart from that land, without a legal basis, when a demand to do so is made by the lawful possessor or his/her agent. Such demand may be spoken or written. No person who has received a demand to stay off such land shall reenter it within 1 (one) year from the date of the demand without the written permission of the lawful possessor or the agent who provided the demand. Violators may be subject to imprisonment for up to 90 (ninety) days or to a payment of up to \$1000, or both. Violators who qualify for enhanced penalties under Minn. Stat. § 609.153 may subject to imprisonment for up to 365 (three hundred sixty-five) days or to a payment of up to \$3,000, or both.

It shall be noted on this date _____ (month/date/year), you were advised of the above statute. This trespass notice form constitutes a written demand to depart from the premises by the lawful possessor or an agent of the lawful possessor. This demand to depart is due to your disruptive, harassing, threatening, and/or non-conforming behavior.

- I, the lawful possessor or agent thereof, will complete a security report; therefore, I have not described your conduct on this notice.
- I, the lawful possessor or agent thereof, will NOT be completing a security report; therefore, I have briefly described your conduct below:

Address of place from which party is trespassed

Name of party being trespassed

Date of birth

Name of person issuing the notice

Signature of party receiving the notice

Note to the Owner/Lawful Possessor:

Make two (2) copies: one copy for the person receiving the notice, one copy for your records. If possible, attach a photo to your copy. Warning is valid for 1 (one) year pursuant to the amendment of Minn. Stat. § 609.605 (enacted 8-1-2005) and/or Mpls. Code § 385.380 (enacted 12-10-2005).

For individuals with disabilities:

If you need this material in Braille, large print, computer disk, or cassette tape, call 673-3447. Sign language interpreters available — call 673-3220 or 673-2626 (TTY). Please allow two weeks for accommodation.

INFORMATION SHEET

Order for Protection (OFP) v. Harassment Restraining Order (HRO)

P = Petitioner R = Respondent

	OFP	HRO
Relationship of Petitioner (person in need of protection) to Respondent (person from whom protection is needed)	<ul style="list-style-type: none"> • blood relative • live together now or have lived together in the past • have a child together or are pregnant with • are or were involved in a romantic or sexual relationship 	<ul style="list-style-type: none"> • No relationship requirements
Requirements	<ul style="list-style-type: none"> • actual physical harm • threat of physical harm • interference w/ 911 call • forced sexual contact • any sexual contact if the person needing protection is a minor 	<ul style="list-style-type: none"> • physical assault • sexual assault • <u>more than 1 incident</u> of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another
Relief	<ul style="list-style-type: none"> • R may be excluded from home & sheriff will remove R from home • P may ask for guns to be removed from home • Temporary custody / parenting time may be granted 	<ul style="list-style-type: none"> • Sheriff will not remove R, but may restrict R from returning to home • No provisions for removal of guns • No provisions for any family law matters
Hearings	<ul style="list-style-type: none"> • May be granted without a hearing • P or R may request a hearing • Hearings are held in Family Court - @ the FJC 	<ul style="list-style-type: none"> • May be granted without a hearing • P or R may request a hearing • Hearings are held @ HCGC – 3rd floor
Fees	<ul style="list-style-type: none"> • P: None • R: None 	<ul style="list-style-type: none"> • P: none if the alleged actions would constitute criminal harassment or if person is indigent (IFP), otherwise \$322 • R: \$322
Violations	<ul style="list-style-type: none"> • Entered into the "OFP State System", which means that the police have access to the order when a 911 call is made • Violation of OFP is a crime & contempt of court= Minn. Stat. §260C.405 	<ul style="list-style-type: none"> • Police do not have record of the HRO. P must keep copy of HRO and show it to the police if there is a violation. • Violation of an HRO is a crime = Minn. Stat. §609.749

How to Apply for a Harassment Restraining Order (Petitioner Instructions)

Who May Apply?

A person who is a victim of harassment (Petitioner) may seek a restraining order from the Court. The parent or guardian of a minor who is the victim of harassment may seek a restraining order on behalf of the minor. The restraining order prohibits harassment and may be issued against an individual (Respondent) who has engaged in harassment, or against organizations (Respondent) that have sponsored or promoted harassment. A restraining order ends on the date specified in the order. This is usually two years from the date the order is signed.

What is Harassment?

Under Minn. Stat. § 609.748, harassment is defined as:

1. A single incident of physical or sexual assault.
2. Repeated incidents of intrusive or unwanted acts, words or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security or privacy of another, regardless of the relationship between you and the alleged harasser.
3. Targeted residential picketing, which includes:
 - a. marching, standing, or patrolling by one or more persons directed solely at a particular residential building in a manner that adversely affects the safety, security, or privacy of an occupant of the building, and
 - b. marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.
4. A pattern of attending public events after being notified that one's presence is harassing to another.

To get a temporary restraining order under 1 and 2 above, the Petition must also allege an immediate and present danger of harassment. The purpose of the harassment restraining order is to protect a person from future harassment. Therefore, to get a restraining order under 1 and 2, there must have been acts that meet the definition of harassment AND a likelihood that the harassment will continue.

Harassing actions may also be crimes that should be reported to the police.

How do I apply for a Restraining Order?

Fill out Forms

Fill out the **Petitioner's Affidavit and Petition for Restraining Order**. The Affidavit should be as complete and specific as possible. Dates, times, places, actions and conversations that lead the petitioner to feel harassed should be included in the narrative of the affidavit with the most recent acts listed first. If you called the police about an

incident, you can get a copy of the police report from the police department, and attach it to the Petitioner's Affidavit and Petition.

The court administrator can provide forms and clerical assistance. The forms are also available on-line at www.mncourts.gov/ctforms.

File Forms

File the Petitioner's Affidavit and Petition with the court administrator. A filing fee will be charged unless the petition alleges acts that would violate felony or gross misdemeanor harassment statutes. If you are low income, you may request filing fees be waived by filing an "IFP form" that is available from the court administrator. In some cases, a Judge may order the respondent to pay the petitioner's filing fees.

Getting a Restraining Order

After the forms are filed, Court Administration will give them to a Judge for review. The Judge might:

- Issue a restraining order
- Dismiss the case
- Schedule a hearing, with or without a temporary restraining order

If the Judge finds that the Petition stated facts to support a restraining order, the Judge will issue a restraining order for 2 years or less. The order stays in effect for the 2 years (or other time period) unless you requested a hearing or respondent requests a hearing. Respondent has a right to request a hearing to argue against the restraining order. Respondent must make this request within 45 days of the date of the Order. The sheriff serves the order (see Service).

If the Judge decides that the Petition does not state facts to support a restraining order, the Judge will dismiss the petition. If dismissed, your case is over and you do not have a right to a hearing.

The Judge can also decide that the Petition states facts meeting the definition of harassment, but does not show that the harassment is likely to continue. If you asked for a hearing in this situation, or if the Judge wants to have a hearing for any other reason, the Judge may schedule a hearing to allow you to explain your Petition more completely and to prove the truth of your statements.

Service

A copy of any order must be served on the respondent (the alleged harasser). The Sheriff will serve the respondent without charging a fee to the petitioner. Service is complete when the sheriff's office personally delivers a copy of the papers to the respondent. **Check with the Sheriff's office to make sure service is done.**

If the respondent is a juvenile and the parent or legal guardian is not the petitioner, the court will mail a copy of the order to the respondent's parent or legal guardian at their last known address.

If personal service cannot be completed because the respondent is avoiding service or you do not know the respondent's address, you may ask the court administrator's office to complete service by published notice.

Change of Address

If you move, it is important that the court knows where you are. Please keep the court administrator informed of your address.

Hearing

The court may issue a Temporary Restraining Order, granting temporary relief from harassment, without a hearing. If the court does not issue a temporary order, you may have the right to request a hearing within 45 days of filing the petition. Respondent also has the right to request a hearing within 45 days of the date of the Order. If a hearing is scheduled, you must attend the hearing if you want the court to issue a harassment restraining order. Be prepared to present your case to the court. Bring any witnesses and documents to support your case with you.

Caution: If you have a temporary restraining order and Respondent asks for the hearing, the temporary order could be dismissed or terminated if you do not attend the hearing and offer evidence about the harassment. If Respondent asks for a hearing, court administration will send you a notice with the hearing date and time, at least 5 days before the hearing.

Hennepin County Notice: In Hennepin County, you do not bring your witnesses to the first hearing. If witnesses are needed, there will be a second hearing.

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.

State Of Minnesota

County

County

District Court

Judicial District:

Court File Number:

Case Type:

Harassment

Petitioner's Affidavit and Petition for Harassment Restraining Order (Minn. Stat. §609.748)

Petitioner

Name:

Address:

Date of Birth:

On behalf of: (names of minor children who are victims of harassment and their dates of birth)

Name: DOB:

Name: DOB:

Name: DOB:

vs.

Respondent

(Person harassing you or your minor child):

Name:

Address:

Date of Birth:

(if known, or approximate age)

STATE OF MINNESOTA

COUNTY OF

(COUNTY WHERE AFFIDAVIT IS SIGNED) ss

I understand that I am under oath/affirmation and I must tell the truth. I state that:

- 1. I am the Petitioner in this case. The victim of the harassment is me a minor child for whom I am the parent, legal guardian or stepparent. (If you are the guardian, attach a copy of the order appointing you.)

The name of each victim, other than me, is:

How does each victim know the Respondent and what is their relationship?

If you are filing on behalf of another person, what is your relationship to each victim?

- 2. How many restraining orders have been in effect, ordering Respondent to stay away from the victims you

included at #1 above? none one two or more. For each restraining order provide:

Court File Number, if known	County and State where the court is located

3. The following court cases involve me and the Respondent in issues of child custody or parenting time:

Court File Number	County and State where the court is located

4. Respondent has harassed the victim(s) as follows:

- *Check all boxes that apply and give the date and details of each incident.*
- *To get a Restraining order, you must describe actions that meet the legal definition of harassment in Minnesota. See the Instructions for the definition of harassment.*
- *One incident of physical or sexual assault can meet the definition of harassment. For any other act, there must be more than one incident.*
- *If you need more space, attach a full sheet of paper and continue your description there. Do not write on the back.*

Respondent physically or sexually assaulted the victim as follows: _____

Respondent has followed, pursued or stalked the victim as follows: _____

Respondent made uninvited visits to the victim as follows: _____

Respondent made harassing phone calls to the victim as follows: _____

Respondent made threats to the victim as follows: _____

Respondent frightened the victim with threatening behavior as follows: _____

Respondent broke into and entered the victim's residence as follows: _____

Respondent damaged the victim's property as follows: _____

Respondent stole property from the victim as follows: _____

Respondent took pictures of the victim without permission as follows: _____

More than once, Respondent has done acts that meet the legal definition of "targeted residential picketing" by: _____

I told Respondent not to come to certain public events that I or the children attend because: _____

After that, Respondent attended public events I/we attended: (List dates, places and name of events)

_____ These acts by Respondent show a pattern of attending public events while knowing that attending is harassing to me/children.

Other: _____

5. Describe the effect the harassment has upon the victim's safety, security or privacy:

6. Do you believe the harassment will continue? Why?

7. I ask the Court to issue a Restraining Order as follows: *Check all boxes (a through e) that apply.*

a. Respondent shall not harass me minor child (ren) for whom I am the parent, legal guardian, or stepparent. List the full names of the minor children included in this Petition: _____

b. Respondent shall have no contact with me the minor child(ren) listed above.

c. Respondent shall stay away from where I/we live(address) _____

d. Respondent shall stay away from my/the victim's job site located at _____

e. Other: _____

8. Court Hearing

Petitioner: Read these Notices about a Hearing

- *You have a right to request a court hearing.*
- *If the Judge dismisses your case because it has no merit, no hearing will be held.*
- *The Judge can issue a Restraining Order without a court hearing if the Judge finds there is immediate and present danger of harassment.*
- *If the Judge issues a Restraining Order without a hearing, the Respondent can request a hearing within 45 days of the date the Restraining Order is issued. If Respondent requests a hearing, the court will notify you by mail at least five days before the hearing date.*
- *If there is a hearing, you must attend the hearing and prove that the statements in your Petition & Affidavit are true, and that Respondent's actions are harassment, as defined by Minnesota law.*

Choose a. or b.

a. I am not requesting a court hearing at this time.

But if the court denies my request for a restraining order because the court finds there is no immediate and present danger of harassment, then (check one) I want I don't want a court hearing.

OR

b. I am requesting a court hearing.

9. I request a Restraining Order for a length of:

2 years

Until the following date: _____, which is less than 2 years from today.

Up to 50 years because:

I have two or more prior restraining orders against Respondent (listed at #2 above.)

Respondent has violated a prior or existing restraining order between us on two or more occasions.

I understand the court will likely schedule a court hearing for any request over 2 years.

Dated: _____

Signature (sign only in front of notary public or court administrator.)

Name: _____

Subscribed and sworn to before me

Address _____

Date: _____

City/State/Zip _____

Notary Public \ Deputy Court Administrator

Telephone (____) _____

Notice: If your address or telephone changes, you must give Court Administration your new information right away, in writing.

State of Minnesota

District Court

County _____

Judicial District: _____
Court File Number: _____
Case Type: Housing

Plaintiff (Landlord) _____

Plaintiff's Date of Birth: _____
(if known)

Address _____

vs.

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

Defendant (Tenant) _____

Tenant's Date of Birth: _____
(if known)

Address _____

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

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

2. The landlord of the premises described above is _____

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 _____, OR

Where Posted

c. the above information was known by the tenant not less than 30 days before the filing of this action because: _____

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 _____ in the amount of \$ _____ per month payable on the _____ day of each month for a total due of \$ _____.

- 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 _____ and tenant was told Gave notice to vacate the property by _____
 - c. The tenant has broken the terms of the rental agreement with property landlord by: (be specific) _____
 - d. The tenant has breached the covenants set forth in Minn. Stat. §504B.171 by: (be specific) _____
 - e. Defendant defaulted on the mortgage and the property has been sold at a Sheriff's sale. The Redemption period has expired and Plaintiff is entitled to possession.
 - f. Defendant defaulted on a contract deed and is holding over after proper cancellation of the contract.
5. The landlord seeks judgment against the above tenant(s) for restitution of said premises plus costs and disbursements herein.

Verification and Affidavit of Non Military Status

I, (Name) _____, being sworn/affirmed, state that I am the plaintiff/agent/attorney in this action, that I have read the complaint and that it is true to the best of my knowledge; that tenant(s) is/are not now in the military service of the United States, to the best of my information and belief.

******Notice: A licensed attorney must sign the Complaint and appear in court on behalf of a corporation or LLC. In Hennepin County only, Housing Court Rule 603 may permit a corporation or LLC to file and appear in court without a licensed attorney.******

Dated: _____

Signature
(Sign only in front of notary public or court administrator)

Sworn/affirmed before me this
_____ day of _____, _____

Name: _____
Address: _____
City/State/Zip: _____
Telephone: (____) _____

Notary Public \ Deputy Court Administrator