

2020

Not with Strong Hands, nor with a Multitude of People: The Statutory History of the Eviction Procedure in Minnesota

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Recommended Citation

Birnberg, Paul and Spaid, Samuel (2020) "Not with Strong Hands, nor with a Multitude of People: The Statutory History of the Eviction Procedure in Minnesota," *Mitchell Hamline Law Journal of Public Policy and Practice*: Vol. 41 : Iss. 3 , Article 8.

Available at: <https://open.mitchellhamline.edu/policypractice/vol41/iss3/8>

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MITCHELL HAMLINE
LAW JOURNAL OF
PUBLIC POLICY AND PRACTICE

VOLUME 41

2020 SYMPOSIUM EDITION

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**NOT WITH STRONG HANDS, NOR WITH A MULTITUDE OF
PEOPLE: THE STATUTORY HISTORY OF THE EVICTION
PROCEDURE IN MINNESOTA**

*Paul Birnberg and Samuel Spaid**

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I. INTRODUCTION

Minnesota became a territory on March 3, 1849, and Minnesota’s first territorial laws were established in 1851.¹ Eviction actions, then called Unlawful Detainer actions, were covered primarily in Chapter 87 of these territorial laws, which began:

No person or persons shall hereafter make an entry into lands, tenements, or other possessions, but in cases where entry is given by law; and in such cases, not with strong hands, nor with a multitude of people, but only in a peaceable manner; and if any person from henceforth do to the contrary, and thereof be duly convicted, he shall be punished by fine.²

* For readers who would like more information on the underlying research, please contact the authors. Paul Birnberg may be contacted by mail, phone, or email at 3439 Eleventh Avenue South, Minneapolis, MN 55407, (612) 722-1993, paulrainerbirnberg@gmail.com. Samuel Spaid may be contacted at HOME Line by email at samuels@homelinemn.org.

1. Prior to this date, Minnesota operated under the laws in force in the then-territory of Wisconsin. MINN. TERR. STAT. ADVERT. (1851).

2. MINN. TERR. STAT. CH. 87 § 1 (1851).

This statute, which persists today in a slightly modified form, laid out the purpose of the eviction process—a legal method for recovery of possession of premises.³

This article summarizes the history and evolution of the residential eviction process in Minnesota.⁴ The article documents the residential eviction process as established in Minnesota's first territorial statutes, the significant changes that have occurred since then, and the resulting statutes in place today. The purpose of this summary is to provide an easily accessible context to a process that has affected hundreds of thousands of Minnesotans over the course of this state's history.⁵

II. TERRITORIAL EVICTION LAWS

As noted above, Minnesota became a territory on March 3, 1849, and Minnesota's first territorial laws were established in 1851. At that time, a landlord could file an eviction action for three reasons: (1) nonpayment of rent, (2) breach of lease, or (3) holdover after the end of the lease.⁶ Prior to filing an eviction action, the landlord had to give the tenant a three-day notice to vacate or, in the case of nonpayment, a three-day notice to pay or vacate.⁷

After giving the notice and waiting for three days, the landlord could then file a complaint with the court.⁸ The court would then issue a summons for the initial hearing which, by law, had to be held within six to ten days from the day of issuing such summons.⁹

The summons had to be served by the sheriff at least three days in advance of the initial hearing if served via personal service,¹⁰ or six days in advance of the initial hearing if by substitute service.¹¹ The case would be resolved at the first hearing, although the court

3. MINN. STAT. § 504B.281 (2019) (“No person may occupy or take possession of real property except where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner.”).

4. This article focuses solely on those statutes which apply to residential tenancies.

5. There have been more than 10,000 evictions filed each year in Minnesota for the last decade. Some years approach closer to 20,000. This means there have been over 100,000 eviction cases in the last ten years alone. Evictions affect not only the individuals listed in the court complaint, but everyone in the household, including children. Since the number of evictions will have increased over time with the population, stating that hundreds of thousands of people have been impacted is still a conservative estimate.

6. MINN. TERR. STAT. CH. 87 § 12 (1851).

7. *Id.*

8. *Id.* at § 3.

9. *Id.*

10. *Id.* at § 4.

11. *Id.* at § 6.

could continue the trial for up to six days.¹² The case would be heard by a justice of the peace unless either side requested a trial by jury.¹³ In the case of nonpayment, a tenant could redeem by paying the amount of rent in arrears plus interest and court costs, and perform the other covenants on his part as the tenant.¹⁴

However, if the defendant provided evidence and assurances that their witnesses could not be ready in six days, the defendant could pay a bond set by the court and the trial could be delayed for up to three months.¹⁵ If the landlord prevailed, judgment and the writ of restitution would be issued immediately, and the landlord would have a claim for treble damages against the defendant.¹⁶ Any appeal of the final judgment had to be made within ten days.¹⁷ If the defendant lost the eviction case and appealed, the case (and any writ) would be stayed pending the appeal.¹⁸ In nonpayment cases, the tenant has a right to redeem—pay rent in arrears plus interest and court costs—within six months.¹⁹ Upon redemption the tenant could regain possession and move back in.²⁰

III. A CHRONICLE OF CHANGES

While there are minor revisions here and there, including some recodification changes which are not covered, the following is an otherwise complete list of the substantive changes, and more important codification changes, to the eviction process from 1851 to present day:²¹

1858: Minnesota became a state on May 11, 1858. The first published state statutes in 1858 contained no substantial changes to the 1851 territorial laws regarding eviction.²²

1863: The treble-damages penalty was removed as was the requirement that the landlord provide three days' notice before filing an eviction and give the tenant an opportunity

12. *Id.* at § 7.

13. *Id.* at § 7.

14. MINN. TERR. STAT. CH. 74 § 14 (1851).

15. MINN. TERR. STAT. CH. 87 § 7 (1851).

16. *Id.* at § 11.

17. *Id.* at § 17.

18. *Id.* at §§ 18–19.

19. MINN. TERR. STAT. CH. 74 § 14.

20. *Id.*

21. See the attached timeline for an overview.

22. MINN. STAT. CH. 77 (1858).

to leave, or in the case of nonpayment, pay.²³ These changes remain to this day.

1901: The six-month period to redeem was removed and replaced with a right to redeem only before possession was delivered to the landlord and a \$5 attorney fee was added to the cost of redemption (this is basically the same rule as today without the special rights afforded a tenant with a lease longer than 20 years).²⁴

1909: A 24 hour move-out period was added to the writ, preventing the sheriff from forcibly removing the tenant until at least 24 hours after the sheriff served the writ.²⁵ The appeal bond now required rent to be paid as well, instead of only the costs of appeals, and allowed the landlord to oust holdover tenants with their own bond.²⁶ The service requirements were changed to include a third method of service by a combination of mailing, posting, and publishing.²⁷ This third form of service exists today but was modified in 1976 and 1985.

1917: The six month redemption rule was returned, but now only applies to leases for 20 years or longer.²⁸

1971: Retaliation protections were added for tenants.²⁹ Other than the more general civil rights laws³⁰ and the similar retaliation protections added in 1973, this is the only significant eviction defense added directly by statute. This defense exists today.

23. MINN. STAT. Ch. 84 (1863).

24. 1901 Minn. Laws, Ch. 72.

25. 1909 Minn. Laws, Ch. 496 (“[C]hapter 76 of the Revised Laws of 1905 shall be further amended by add, adding . . . a new section . . . [§] 4051½.”). *Id.* at § 5. This is now codified in MINN. STAT. § 504B.365 (2019) 1909 Minn. Laws Ch. 496 § 5 amended Rev. Laws 1905, adding a new section, § 4051½, now codified at MINN. STAT. § 504B.365.

26. *Id.* at § 2. Rev. Laws 1905, § 4046 provides the new language.

27. 1909 Minn. Laws, Ch. 496 § 1.

28. 1917 Minn. Laws, Ch. 428 § 1.

29. 1971 Minn. Laws, Ch. 240 § 1.

30. Now codified at MINN. STAT. CH. 363A.

- 1973: Fines and criminal penalties were eliminated for unlawful detainers.³¹ Retaliation protections were broadened for residential tenants who complained to a city.³²
- 1976: The service requirement for mailing, posting, and publishing was changed to mail and post only.³³ This statute was later modified in 1985.
- 1981: The three to ten day initial hearing window was changed to seven to fourteen days.³⁴ Service was also changed to seven days before the initial hearing and the court could now stay the writ for seven days if immediate restitution would be a hardship for the tenant or the tenant's family.³⁵ Service by process server instead of only by the sheriff was now allowed.³⁶ These changes still exist today.
- 1984: Tenants received one month of protection when the owner lost the home to foreclosure or by cancellation of contract for deed.³⁷ This protection was expanded again during the foreclosure crisis in 2010.
- 1985: Mail and post service was amended to require two prior attempts at personal service, on different days and at least once between 6:00 p.m. and 10:00 p.m.³⁸ This form of service exists today.
- 1989: Eviction for possession of illegal drugs was allowed even if the lease did not so provide.³⁹ This statute was amended several times to add possession of illegal guns, possession of stolen goods, and engaging in prostitution.
- 1993: A landlord was allowed to commence an action for recovery of the premises by combining the allegation of non-payment

31. 1973 Minn. Laws, Ch. 611.

32. *Id.* at § 23.

33. 1976 Minn. Laws, Ch. 123 § 1.

34. 1981 Minn. Laws, Ch. 168 § 3.

35. *Id.* at § 4.

36. *Id.*

37. 1984 Minn. Laws, Ch. 566 § 5.

38. 1985 Minn. Laws, Ch. 214 § 1.

39. 1989 Minn. Laws, Ch. 305 § 1.

of rent and breach of lease in the same suit.⁴⁰ Breach allegations must be heard first.⁴¹ Expedited hearings for evictions where illegal drugs were alleged was added.⁴²

1997: Expedited relief for the landlord now allowed in the cases of possession of illegal drugs, illegal guns, contraband and for serious nuisance.⁴³ This statute still exists this way today. Minnesota Statutes section 504.181, what is now Minnesota Statutes section 504B.171, is expanded to include possession of illegal guns and engaging in prostitution.⁴⁴

1998: Minnesota Statutes section 504.181, what is now Minnesota Statutes section 504B.171, is expanded to include possession of contraband (stolen goods).⁴⁵

1999: The legislature recodified all of Minnesota Statutes Chapters 504 and 566 into a new chapter, Minnesota Statutes Chapter 504B, and simultaneously modernized some of the statutory language. These changes were not intended to change the statutes' meaning.⁴⁶

2010: Tenants whose landlords lost the home in foreclosure are allowed to remain for the greater of 90 days or the length of their bona fide lease.⁴⁷ There were no additional protections added for tenants of contract for deed vendees.

2013: The time to appeal changed from ten to fifteen days.⁴⁸ The time to appeal remains this way today.

40. 1993 Minn. Laws, Ch. 165 §§ 1, 3.

41. *Id.*

42. *Id.* at § 4.

43. 1997 Minn. Laws, Ch. 239, art. 12 § 5.

44. *Id.* at § 4.

45. 1998 Minn. Laws, Ch. 367, art. 11 § 17.

46. 1999 Minn. Laws, Ch. 199; *Occhino v. Grover*, 640 N.W.2d 357, 362 (Minn. Ct. App. 2002).

47. 2010 Minn. Laws, Ch. 315 §§ 11, 13 (had sunset date); 2013 Minn. Laws, Ch. 100 §§ 2–3 (sunset date omitted).

48. 2013 Minn. Laws, Ch. 100 § 4.

2014: Minnesota Statutes section 504B.171 was expanded to include domestic violence.⁴⁹

IV. CURRENT EVICTION LAWS

The current eviction procedure is now governed primarily by Minnesota Statutes sections 504B.281 through 504B.371. Summarizing the current process in light of the changes listed above, the results provide that a landlord may file an eviction action for four reasons: (1) nonpayment of rent, (2) breach of the lease, (3) holdover after the end of the lease, and (4) a violation of Minnesota Statutes section 504B.171 (unlawful activities).⁵⁰ A landlord is not required to provide the tenant with a chance to fix any violations, nor is a landlord required to give a tenant any advance notice before filing an eviction action.⁵¹

In order to initiate an eviction action, the landlord must file a complaint with the court.⁵² The court still issues a summons commanding the tenant to appear at the initial appearance, but as a result of several changes in 1981, this initial court appearance must be between seven and fourteen days from when the court issues the summons, and a copy of the complaint must be attached to the summons.⁵³

The summons must be served on the tenant at least seven days before the initial court appearance, and service may be accomplished by: (1) personal service, (2) substitute service, or (3) mailing and posting.⁵⁴

At the initial appearance, the court hears and issues a decision in the action unless a continuance of trial is granted.⁵⁵ In the case of nonpayment of rent, a tenant can redeem by paying the amount of rent in arrears plus interest and court costs and up to \$5 of attorney fees.⁵⁶ Either party may demand a jury trial.⁵⁷ If the court grants a continuance for trial, it can only be for six days unless all parties consent to a longer continuance.⁵⁸

49. 2014 Minn. Laws, Ch. 188 § 1 (domestic violence).

50. MINN. STAT. §§ 504B.171, 504B.285, 504B.291 (2019).

51. This is the rule for the vast majority of Minnesota private-market rentals. If the unit is subsidized or the tenant owns a manufactured home in a manufactured home park, additional laws may apply that impact pre-eviction notice requirements.

52. MINN. STAT. § 504B.321 (2019).

53. *Id.*

54. MINN. STAT. § 504B.331 (2019).

55. MINN. STAT. § 504B.335 (2019).

56. MINN. STAT. § 504B.291, subdiv. 1(a) (2019).

57. MINN. STAT. § 504B.335.

58. In theory, a court may continue a trial for up to three months if they cannot get a witness to attend that quickly and pay a bond. However, actions on a written lease are not included, excluding many landlord-tenant cases, and in practice are rare. MINN. STAT. § 504B.341 (2019).

If the landlord prevails in the eviction, the landlord receives a writ of recovery of premises.⁵⁹ The court can stay this writ for no more than seven days.⁶⁰ In the case of nonpayment, the court can allow the tenant to redeem until the writ is issued.⁶¹ If the tenant does not redeem, the landlord can then give the writ to the sheriff, and the sheriff can post the writ on the tenant's door.⁶² The sheriff can remove the tenant, forcibly if necessary, 24 hours after posting the writ.⁶³

After a final judgment in the eviction case, either party may appeal to the Minnesota Court of Appeals within fifteen days.⁶⁴ If the tenant loses the eviction action and informs the court of their intent to appeal, the court shall issue an order staying the writ for at least 24 hours.⁶⁵ If there is an appeal by the tenant, all further proceedings in the case, including the writ, are stayed if the tenant bonds or pays to retain possession, generally in the amount of rent owed going forward.⁶⁶ However, in an eviction action for holdover, the landlord may pay a bond during the appeal to prevent the stay.⁶⁷

V. CONCLUSION

The eviction procedure established in 1851 exists in substantially the same form today.⁶⁸ Timelines have, in many cases, been extended by a few days; the criminal penalties have been removed; service options have been expanded as have the reasons a landlord is allowed to evict for; and a few significant tenant protections have been added in the form of protection from retaliation and discrimination. However, the core of the eviction process remains intact.

The eviction process remains what it has always been—a process designed to quickly determine who has the right to legal possession, and, if it is not the person currently in possession, they are dispossessed.

59. MINN. STAT. § 504B.345 (2019).

60. *Id.*

61. MINN. STAT. § 504B.291.

62. MINN. STAT. § 504B.365 (2019).

63. *Id.*

64. MINN. STAT. § 504B.371 (2019). The appeal process otherwise follows the normal rules and guidelines of appellate procedure.

65. *Id.*

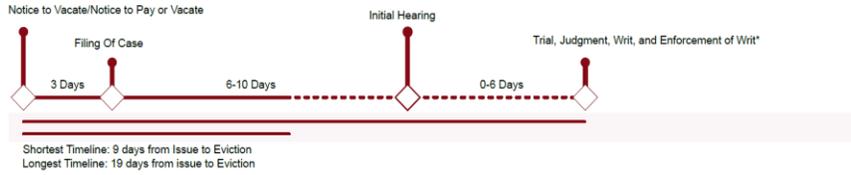
66. *Id.* If the court has already issued the writ before the tenant appeals, the party appealing remains in possession if they give a bond.

67. *Id.*

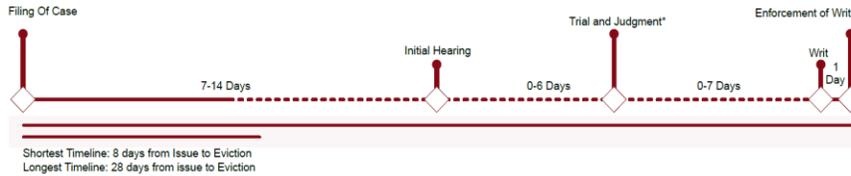
68. See the attached chart for a comparison of the two timelines.

APPENDIX: HISTORIC EVICTION TIMELINES

Territorial Timeline



Current Timeline



Comparisons of Timelines



*This assumes that the trial took only one day and the judge did not deliberate. This is certainly the most likely outcome today.

1851

2020



1851: Minnesota's first territorial laws

1858: Minnesota became a state on May 11, 1858

1863: The treble-damages penalty and three day notice penalty removed

1901: The six-month period to redeem was removed and replaced with a right to redeem only before possession

1909: A 24-hour move-out period was added to the writ, appeal bond now required rent to be paid as well, landlord may oust holdover tenants with their own bond, and service by mail, posting, and publishing now allowed

1917: The 6-month redemption rule was returned for leases for 20 years or longer

1971: Retaliation protections added for tenants

1973: Fines and criminal penalties were eliminated for unlawful detainers, and retaliation protections were broadened for residential tenants who made a complaint to a city

1976: mail and post only allowed

1981: The 6-10 day initial hearing window was changed to 7-14 days, service was also changed to 7 days before the initial hearing and the court could now stay the writ for 7 days if immediate restitution would be a hardship for the tenant or the tenant's family, and service by process server instead of only sheriff now allowed

1984: Tenants received one month of protection when the owner lost the home to foreclosure or by cancellation of contract for deed

1985: Mail and post service was amended to require two prior attempts at personal service, on different days and at least once in the evening

1989: Eviction for possession of illegal drugs allowed even if the lease did not so provide

1993: Allowance of breach and non-payment allegations in same case

1997: Expedited relief for the landlord now allowed, and Minn. Stat. 504B.171 expanded to include possession of illegal guns and engaging in prostitution

1998: Minn. Stat. 504B.171 expanded to include possession of contraband

1999: statutes recodified into a new chapter, Minn. Stat. Ch. 504B

2010: Tenants whose landlord loses the home in foreclosure allowed to remain for the greater of 90 days or the length of their bona fide lease

2013: Appeal deadline changed from 10 to 15 days

2014: 504B.171 expanded to include domestic violence