

## COMMON DEFENSES TO EVICTION COURT CASES

### YOU MAY HAVE A DEFENSE TO EVICTION

A “defense” is an argument or reason you give to the court to support your case. While this booklet does not discuss all possible defenses, the most common defenses are included. If you live in public or government subsidized housing, additional defenses may apply to your case (see page 55). **Contact a lawyer or your local legal services office to figure out which defenses apply to your case.**

At the back of this booklet is a form "Answer" that you can use to list your defenses in response to the landlord's eviction (unlawful detainer) complaint (see pages 59 - 61). To use this Answer, do the following:

1. Write the names of the parties and the case number from the Summons in the space provided
2. Check off the defenses that apply to your case
3. Sign and date the form
4. Give one copy of the completed Answer to the Court Administrator and one copy to the landlord at your hearing, and keep a copy for yourself. Remember you may be eligible to apply for waiver of the filing fee.

#### **Note**

The Answer form does not include some defenses which apply only to public and government subsidized housing. If you live in public or subsidized housing (including Section 8 housing), contact a lawyer or your local legal services office for help.

### IMPROPER DELIVERY OF EVICTION COURT PAPERS - “SERVICE”

There are rules about how the court papers must be given (served) to you. Your landlord cannot sue to evict you without serving you the papers in the right way. You must **get** the Summons and Complaint at least **7 days before your court hearing**. In most circumstances, the Summons and Complaint must be delivered by hand, **by someone other than the landlord**. These papers may **not** be given to a person who does not live in your apartment or who is not of "suitable age and discretion", like a young child. The **only** time the landlord can mail the papers to

your address is if you cannot be found in the county after delivery of the papers has been tried twice. At least one of those attempts must be made between 6:00 p.m. and 10:00 p.m.

## **LANDLORD NOTICES, REGISTRATION AND RENTAL LICENSES**

### Notices

Your landlord cannot sue to evict you if you did not know the names and addresses of the owner or manager of the apartment, and the names and addresses of the landlord's agents who can accept notices from you.

### Registration

If your landlord has a trade name and is not a corporation, the landlord must register the trade name with the Secretary of State. If the landlord does not register, the court should stop the eviction case until the landlord registers. If this happens, the landlord must pay you \$250. Call the Secretary of State at (651) 296-2803 to make sure the landlord is not a corporation and to find out if the trade name is registered. The Secretary of State can provide you with a certificate stating that the trade name is not registered.

### Rental Licenses

Minneapolis and some other cities require that landlords have rental licenses before renting property. If you find out that your apartment is not licensed you should get a record from the housing department that there is no license. Depending on your city, the landlord may not have the right to bring an eviction against you for not paying your rent if the landlord does not have a license.

## **NONPAYMENT OF RENT CASES**

If the Complaint states that you owe rent, you will have a defense if you can prove that you paid the rent already. Bring all receipts, canceled checks, or witnesses to court to show you paid the rent.

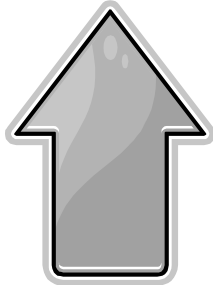
If you paid part of your rent and the landlord did not give you a receipt stating that you have to pay the rest of the rent, your landlord might not be able to evict you for not paying the rest of the rent owed. This includes partial payments made for the month you are in court. However, you still might owe the rent to your landlord, who could withhold part of your security deposit when you move out or sue you in Conciliation Court to collect it.



If you withheld your rent because your landlord has not made needed repairs, **you should bring the withheld rent (in cash) to court because you may need to deposit it into court.** Also, bring all the photographs, letters to your landlord, inspection reports, and witnesses you have to help prove your case. You can ask the judge to lower your rent because of repair problems (see page 26).

If you bring the rent owed to court (or if you paid the rent after the landlord filed the case), you can ask the court to give you up to 7 days to pay the landlord's filing and late fee if the court orders you to pay it. The landlord's fees will usually be written on the Complaint.

### **INCREASED RENT CASES**



If your landlord improperly raised your rent, the court should order that you do not have to pay the increase. The landlord must give you proper notice to raise the rent and cannot raise the rent to retaliate against you (see pages 35 - 36). **You must bring to court the amount of rent you owed before the increase.** If the judge decides that the increase was proper, you will have to pay the increased rent amount. The court will tell you when you need to pay the increase.

### **UNPAID LATE FEES CASES**

Many landlords will charge a late fee for late rent and add it to the amount you owe. If you did not agree to a late fee, you should tell the judge. Even if your lease allows your landlord to charge a late fee, the fee might not be valid. To be legal, a late fee must be reasonable and must only cover costs that the landlord paid because your rent was late. **It must not be a penalty.** Talk to a lawyer to see if your landlord charged a legal late fee.

### **NOTICE TO MOVE OUT CASES**

If the Complaint states that you got notice to move out and you did not move, make sure the landlord gave you **proper** notice. The landlord usually does not have to give a reason for giving you the notice, but they cannot retaliate against you (see page 32). If your landlord accepted rent from you after the date you were supposed to move, the notice to move out has been canceled. Bring to court all receipts, canceled checks, or witnesses to prove that your landlord got your rent.

### **BREACH OF LEASE CASES**

If the Complaint states that you broke the lease and you do not think you did, bring photographs, documents, receipts, and witnesses to court that will help you prove your case. If your landlord accepted rent from you after the dates on which the landlord says you broke the lease, the landlord may have given up the right to use those incidents as reasons to evict you.

If the Complaint states that you allowed illegal drugs on the property, it could be a defense if it was the people who live with you who had the drugs or allowed them on the property, unless the landlord can prove you knew or had reason to know of this activity.

If you have a disability and you believe that your violation of the lease might have been related to your disability, you may have a defense to the eviction if your landlord did not make reasonable efforts to accommodate your disability. You must ask the landlord to accommodate your disability. Propose a reasonable plan to prevent other problems from happening in the future. Make your proposal in writing.



If you live in public or government-subsidized housing, you can be evicted **only** if there are serious or repeated violations of material terms of the lease, or for other good cause. However, some Section 8 tenancies can now be terminated without cause at the end of the first year of the lease, or at the end of the next term that starts at the end of the first year term. You should contact a lawyer or your local legal services office if you have questions.

### **NONPAYMENT OF RENT AND BREACH OF THE LEASE CASES**

If the Complaint states that you should be evicted because of nonpayment of rent **and** breach of the lease, the court should look at the breach of lease claim first. You should not have to pay withheld rent into court at that time. If the court decides that you did violate the lease and that you have to move, you will not have to pay withheld rent into court. If the court decides that you did not violate the lease, then the court will look at the nonpayment of rent claim.

### **THERE ARE OTHER DEFENSES AVAILABLE IN EVICTION CASES**

Remember that the defenses discussed above are only some of the more common defenses that are available in eviction cases. You should talk with a lawyer to make sure that you have considered all of the defenses that apply to your case.

### **THE WRIT OF RECOVERY**