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GENERAL STATUTES

OF THE
STATE OF MINNESOTA

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Ch. 84] FORCIBLE ENTRIES-AND UNLAWFUL DETAINERS. §§ 6108-6112

CHAPTER 84.

FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

§ 6108. Forcible entry into lands or tenements forbidden.

No person shall hereafter make an entry into lands or tenements, except in cases where an 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; if any person from henceforth does to the contrary, he shall be punished by fine.

(G. S. 1866, c. 84, § 1; G. S. 1878, c. 84, § 1.)

See, generally, as to forcible entries and unlawful detainers, *Steele v. Bond*, 23 Minn. 267, 272, 9 N. W. Rep. 772; *Gray v. Hurley*, 28 Minn. 388, 10 N. W. Rep. 417; *State v. Municipal Court*, 28 Minn. 162, 2 N. W. Rep. 163; *Hoffman v. Parsons*, 27 Minn. 236, 6 N. W. Rep. 797; *Whitaker v. McClung*, 14 Minn. 170 (Gil. 131).

§ 6109. Justices of peace to have jurisdiction, etc.

Any justice of the peace has authority to inquire, as hereinafter directed, as well against those who may make unlawful or forcible entry into lands or tenements, and detain the same, as against those who, having lawful or peaceful entry into lands or tenements, unlawfully and forcibly detain the same; and if it is found, upon such inquiry, that an unlawful or forcible entry has been made, and that said lands or tenements are unlawfully detained by force and strong hand, or that the same, after a lawful entry, are so held or detained unlawfully, such justice shall cause the party complaining to have restitution thereof.

(G. S. 1866, c. 84, § 2; G. S. 1878, c. 84, § 2.)

To maintain the action under §§ 6108, 6109, the entry need not be forcible, but the detainer must be unlawful, and with force and strong hand; that is, under circumstances of actual violence or terror. *Davis v. Woodward*, 19 Minn. 174, (Gil. 137.)

See *Hennessey v. Pederson*, 23 Minn. 461, 11 N. W. Rep. 63; *Petsch v. Biggs*, 31 Minn. 392, 18 N. W. Rep. 101; *Anderson v. Schultz*, 37 Minn. 76, 33 N. W. Rep. 440.

§ 6110. Upon complaint made, justice to issue summons.

When any complaint is made in writing, to any justice of the peace, of any such unlawful or forcible entry, or unlawful detainer, said justice shall issue a summons, directed to the sheriff or any constable of the county, commanding him to summon the person against whom such complaint is made, to appear before the said justice, on a day in such summons named, which shall not be less than six nor more than ten days from the day of issuing such summons.

(G. S. 1866, c. 84, § 3; G. S. 1878, c. 84, § 3.)

A complaint under c. 84, Gen. St., for "forcible entry and detainer," which alleges the plaintiff's actual possession of the premises by his wife, and that defendant did make an unlawful and forcible entry into and upon, and has ever since unlawfully and forcibly detained, the premises, sufficiently alleges plaintiff's possession, and defendant's entry and detainer. *Davis v. Woodward*, 19 Minn. 174, (Gil. 137.)

The complaint in an action for forcible entry and detainer must particularly describe the premises. *Lewis v. Steele*, 1 Minn. 89, (Gil. 67.)

§ 6111. Summons, how served—Return.

Such summons shall be served upon the person against whom the same is issued, by delivering a certified copy thereof to him, at least three days before the return-day thereof; and the officer serving the same shall make a special return of the time and manner of serving said summons.

(G. S. 1866, c. 84, § 4; G. S. 1878, c. 84, § 4.)

§ 6112. Proceedings on return of summons—Trial.

After the return of said summons, and at the time and place appointed therein, the said justice shall proceed to hear and determine said complaint: provided, that if either party calls for a trial by jury, the said justice shall

MINNESOTA STATUTES 1894

§§ 6112-6115 FORCIBLE ENTRIES AND UNLAWFUL DETAINERS. [Ch. 84

issue a venire, in the same manner, and upon the same terms, as in other cases in justices' courts; and such jury shall be sworn as in other cases.

(G. S. 1866, c. 84, § 5; G. S. 1878, c. 84, § 5.)

In proceedings under this chapter, by a landlord against his tenant, to recover possession of premises for non-payment of rent, no previous demand of the rent is required. *Spooner v. French*, 22 Minn. 37.

In an action before a justice, if defendant fails to call for a jury trial, he will be deemed to have waived his right thereto. *Gibbens v. Thompson*, 21 Minn. 398.

A justice of the peace has a reasonable time after the submission of the case in which to consider the same and enter his judgment. Two days held not an unreasonable time. *Id.*

Time for answering in municipal court of Minneapolis. *Universalist General Convention v. Bottineau*, 42 Minn. 35, 43 N. W. Rep. 687.

See *Hennessey v. Pederson*, 23 Minn. 461, 11 N. W. Rep. 63.

§ 6113. Summons—Service by leaving copy—Return.

If, at the time of making said complaint, it appears that the person against whom said complaint is made is absent from the county, the justice before whom the same is made shall issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten, days from the time of issuing the same; and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person's abode, not less than six days before the return-day thereof. Such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall be explained by the officer; and the said officer shall make a special return of the time and manner of serving said summons; and the action shall thereafter proceed as though a personal service were made of such summons. And if the officer cannot find in his county said person against whom such complaint is made, and said person has no last and usual place of abode therein, then such summons may be served by leaving a true and certified copy thereof upon the premises described in such complaint, not less than six days before the return-day thereof. Such copy may be left with any person using, occupying, or in charge of said premises, or any part thereof, and such action shall thereupon proceed as though a personal service were made of said summons.

(G. S. 1866, c. 84, § 6; G. S. 1878, c. 84, § 6; as amended 1881, c. 50, § 1.)

§ 6114. Adjournments—Security for rent.

The justice of the peace may, at his discretion, adjourn any trial under this chapter, not exceeding six days, but in all cases mentioned in section eleven of this chapter, except a case brought upon a written lease, signed and acknowledged by both parties thereto, when the defendant, his agent or attorney, makes oath that he cannot safely proceed to trial for the want of some material witness, naming him; that he has made due exertion to obtain said witness, and believes if such an adjournment is allowed he will be able to procure the attendance of said witness, or his deposition, in season to produce the same upon such trial; and if such person will give bond, with one or more sufficient sureties, conditioned to pay the said complainant for all rent which may accrue during the pendency of such action, and all costs and damages consequent upon such adjournment,—the justice shall adjourn said cause for such reasonable time as appears necessary, not exceeding three months; but no such adjournment shall be allowed where the action is brought upon a written lease, executed as aforesaid.

(G. S. 1866, c. 84, § 7; G. S. 1878, c. 84, § 7; as amended 1881, Ex. S. c. 9, § 1.)

See *Woodcock v. Carlson*, 41 Minn. 542, 547, 43 N. W. Rep. 479.

§ 6115. Depositions taken and used, when.

The deposition of any witness whose testimony is considered necessary by either party may be taken, for the same reason, in the same manner, and with

MINNESOTA STATUTES 1894

Ch. 84] FORCIBLE ENTRIES AND UNLAWFUL DETAINERS. §§ 6115-6118

the same effect, as is provided by law for taking of depositions to be used in justices' courts.

(G. S. 1866, c. 84, § 8; G. S. 1878, c. 84, § 8.)

§ 6116. Judgment, when defendant is found guilty—Costs.

If, upon the trial of any complaint under this chapter, the justice or jury shall find that the defendant or defendants, or either of them, are guilty of the allegations in the complaint, the said justice shall thereupon enter judgment for the complainant to have restitution of the premises, and shall impose such fine, not exceeding one hundred dollars, as he may deem just, and shall tax the costs for the complainant, and may issue execution in favor of said complainant, for such costs, and shall also award and issue a writ of restitution; but if the said justice or the jury find that the person complained of is not guilty, the justice shall tax the costs against the complainant, and issue execution therefor.

(G. S. 1866, c. 84, § 9; G. S. 1878, c. 84, § 9.)

Proper form of judgment of dismissal in the district court, where the plaintiff had recovered judgment and possession in the justice court. *Fish v. Toner*, 40 Minn. 211, 41 N. W. Rep. 972.

See *Gibbens v. Thompson*, 21 Minn. 398; *Hennessey v. Pederson*, 23 Minn. 461, 11 N. W. Rep. 63.

§ 6117. Proceedings when jury cannot agree.

If the jury cannot agree upon a verdict, the justice may discharge them, and issue a venire, returnable forthwith, or at some other time agreed upon by the parties, or fixed by the justice, for the purpose of impannelling a new jury.

(G. S. 1866, c. 84, § 10; G. S. 1878, c. 84, § 10.)

See *Rollins v. Nolting*, 53 Minn. 232, 54 N. W. Rep. 1113.

§ 6118. Proceedings to eject tenants, etc.

When any person holds over any lands or tenements, after a sale thereof on an execution, judgment, or on foreclosure of a mortgage by advertisement, and expiration of the time for redemption, or after the termination of the time for which they are demised or let to him, or to the person under whom he holds possession, or contrary to the conditions or covenants of the lease or agreement under which he holds, or after any rent becomes due, according to the terms of such lease or agreement, or when any tenant at will holds over after the determination of any such estate by notice to quit, in all such cases the party entitled to possession may make complaint thereof to any justice of the peace of the county, and the justice shall proceed to hear, try and determine the same, in the same manner as in other cases hereinbefore provided for; but he shall impose no fine upon such tenants, or persons holding over.

(G. S. 1866, c. 84, § 11; G. S. 1878, c. 84, § 11.)

This remedy applies only to the conventional relation of landlord and tenant, and was not intended as a substitute for the action of ejectment, nor to afford means of enforcing agreements to surrender possession of real estate where that relation does not exist, or has not existed, as the foundation of the lessee's possession. *Steele v. Bond*, 23 Minn. 268, 9 N. W. Rep. 772.

One who, as lessee from the owner, is entitled to the possession of real property, may maintain proceedings to recover possession under the statute relating to unlawful detainers, against a prior lessee of such owner holding over after the expiration of his term. *Burton v. Rohrbeck*, 30 Minn. 393, 15 N. W. Rep. 678.

Proceedings for restitution cannot be maintained against a tenant who has been in possession of the premises more than three years, under a lease, his term not having ended. *Brown v. Brackett*, 26 Minn. 292, 3 N. W. Rep. 705.

In an action under this section, against a tenant holding over after his term expires, all who are in possession under the tenant may be joined with him as defendants. *Judd v. Arnold*, 31 Minn. 430, 18 N. W. Rep. 151.

An under-tenant, in possession of demised premises under a lease from the original tenant, cannot lawfully be dispossessed, in proceedings under the forcible entry and detainer statute, by the landlord against the tenant, to which such under-tenant is not made a party. *Bagley v. Sternberg*, 34 Minn. 470, 26 N. W. Rep. 602. The action may proceed jointly against the tenant and any and all under-tenants. *Id.*

It is not essential that the possession of defendant be maintained by force. *Gluck v. Elkan*, 36 Minn. 80, 30 N. W. Rep. 446.

The fact of a demand by the landlord upon the tenant for the payment of rent and

MINNESOTA STATUTES 1894

§§ 6118-6119 FORCIBLE ENTRIES AND UNLAWFUL DETAINERS. [Ch. 84

taxes, is not jurisdictional in proceedings under the statute relating to forcible entries and unlawful detainers. *Chandler v. Kent*, 8 Minn. 536, (Gil. 479;) *Gibbens v. Thompson*, 21 Minn. 393.

The complaint need not state that plaintiff is the owner, or that he is entitled to the possession, of the demised premises, if it show a leasing by him to defendant, and an entry and possession by the latter under such leasing. *Engels v. Mitchell*, 30 Minn. 122, 14 N. W. Rep. 510.

In such proceedings the justice may proceed to hear the case at the time appointed in the summons, without waiting an hour, as required in G. S. c. 65, § 19, (§ 4975.) *Spooner v. French*, 22 Minn. 37.

That title to real estate is involved must appear from the evidence. *Radley v. O'Leary*, 36 Minn. 173, 30 N. W. Rep. 457.

In an action in the municipal court of St. Paul, under the chapter on forcible entries and detainers, the plaintiff, to entitle himself to judgment of restitution, must prove his case. Such judgment cannot properly be rendered simply upon defendant's default. *Hennessey v. Pederson*, 28 Minn. 461, 11 N. W. Rep. 63.

See *Barker v. Walbridge*, cited in note to § 5237; *Bassett v. Fortin*, 30 Minn. 27, 14 N. W. Rep. 56; *Wright v. Gribble*, 26 Minn. 99, 1 N. W. Rep. 820; *Ferguson v. Kumler*, 25 Minn. 183; *Steele v. Bond*, 32 Minn. 14, 13 N. W. Rep. 330; *Pond v. Holbrook*, 32 Minn. 281, 20 N. W. Rep. 232; *Goenen v. Schroeder*, 18 Minn. 66, (Gil. 51;) *Knight v. Valentine*, 35 Minn. 367, 29 N. W. Rep. 4; *Clementson v. Gleason*, 36 Minn. 102, 30 N. W. Rep. 400.

Commencement of action is not equivalent to entry, and does not work a forfeiture. *Woodcock v. Carison*, 41 Minn. 542, 546, 43 N. W. Rep. 479.

The statute gives the right to restitution against a tenant holding over after default in the payment of rent, whether the lease contains a reating clause or not. *Suchanek v. Smith*, 45 Minn. 26, 47 N. W. Rep. 397.

The complaint in such case does not involve the title to real estate. *Id.*

A clause empowering a mortgagee, in case of default, to take and receive the rents, use and occupancy, and income of the mortgaged premises, so long as default exists, held not to entitle him to maintain proceedings under this chapter before foreclosure. *Pioneer Sav. & Loan Co. v. Powers*, 47 Minn. 269, 50 N. W. Rep. 227.

Where the lease contains no provision for the termination thereof, or for re-entry on breach of covenant, a mere breach of covenant or the commission of waste does not authorize an action under this section. *Bauer v. Knoble*, 51 Minn. 358, 53 N. W. Rep. 805.

See *Anderson v. Schultz*, 37 Minn. 76, 33 N. W. Rep. 440; *Hunter v. Frost*, 47 Minn. 1, 3, 49 N. W. Rep. 327.

Jurisdiction to set aside sheriff's return shown to be untrue, on writ of restitution, and to issue alias writ. *Suchanek v. Smith*, 53 Minn. 96, 54 N. W. Rep. 932.

§ 6119. Restitution.

No restitution shall be made under the provisions of this chapter of any lands or tenements of which the party complained of or his ancestors, or those under whom he holds the premises, have been in the quiet possession for three years next before the entering of the complaint, after the determination of the leasehold estate that he may have had therein; nor shall a writ of restitution issue in any case for twenty-four hours after judgment, if the party against whom judgment is rendered, or his attorney, states to the justice that he intends to take an appeal: *provided*, that if said action is brought upon a written lease, executed by both parties thereto, against a tenant holding over, after the expiration of said lease, restitution of said premises shall be made forthwith; and if the party against whom judgment is rendered, in such case gives notice to the justice that he intends to take an appeal, the justice shall thereupon, as a condition to the issuance of the writ of restitution, require of the complainant a bond, with two sufficient sureties, conditioned that the complainant will pay all costs and damages, if on said appeal said judgment of restitution shall be reversed or a new trial ordered; and upon the filing of such bond the writ of restitution shall issue in the same manner as if no notice of appeal had been given.

(G. S. 1866, c. 84, § 12; G. S. 1878, c. 84, § 12; as amended 1881, Ex. S. c. 9, § 2.)

Since the amendment (Laws 1881, Ex. S. c. 9) to this section, proceedings against a tenant for restitution may be maintained on a proper case at any time during the pendency of the lease, and for three years after the expiration of the leasehold estate. *Suchanek v. Smith*, 45 Minn. 26, 47 N. W. Rep. 397.

The provisions that in actions for the recovery of real property held under a written lease after its expiration, restitution shall be made notwithstanding an appeal, have

(1652)

MINNESOTA STATUTES 1894

Ch. 84] FORCIBLE ENTRIES AND UNLAWFUL DETAINERS. §§ 6119-6124

no application to actions originally brought in the district court. *State v. District Court of Hennepin Co.*, 53 Minn. 433, 55 N. W. Rep. 630.

See *Brown v. Brackett*, 26 Minn. 292, 3 N. W. Rep. 705; *State v. Burr*, 29 Minn. 433, 13 N. W. Rep. 676.

§ 6120. Appeal and bond.

If either party feels aggrieved at the verdict of the jury, or decision of the justice, he may appeal within ten days, as in other cases tried before justices of the peace, except that in all cases where the party appealing remains in possession of the property, his bond shall be, with two or more sufficient sureties, to be approved by said justice, conditioned to pay all costs of such appeal, and abide the order the court may make therein, and pay all rent and other damages justly accruing to the party who is excluded from possession of the property during the pendency of such appeal.

(G. S. 1866, c. 84, § 13; G. S. 1878, c. 84, § 13; as amended 1881, Ex. S. c. 9, § 3.)

An appeal lies from the district court in a proceeding under c. 84, for non-payment of rent. *Barker v. Walbridge*, 14 Minn. 469, (Gil. 351.)

An appeal lies, in actions of forcible entries and unlawful detainers, from the municipal court of Minneapolis to the supreme court. *Boston Block Co. v. Buffington*, 39 Minn. 385, 40 N. W. Rep. 361.

§ 6121. Stay of proceedings.

Upon the taking of such appeal, all further proceedings in the case shall be stayed, except in case of actions brought upon a written lease, for the recovery of possession of property, after the expiration of the term thereof, in which case the writ of restitution shall issue the same as if no appeal had been taken, upon the execution and filing of a bond by the complainant as hereinbefore provided; and the appellate court shall thereafter issue all needful writs and processes to carry out the provisions of this chapter according to the true intent and meaning thereof.

(1866, c. 84, § 14; G. S. 1878, c. 84, § 14; as amended 1881, Ex. S. c. 9, § 4.)

§ 6122. Appeal after issuance of writ—Certificate—Stay.

If a writ of restitution has been issued previous to the taking of an appeal, as provided in this chapter, the justice shall forthwith give the appellant a certificate of the allowance of such appeal, except in case where judgment has been entered in an action brought upon a written lease to recover possession of the property therein described, after the expiration of such lease. Upon the service of such certificate upon the officer having such writ of restitution, the said officer shall forthwith cease all further proceedings by virtue of such writ, except in the cases as hereinbefore provided; and, if such writ has not been completely executed, the defendant shall remain in the possession of the premises until the appeal is determined, except in case where the action is brought upon a written lease to recover possession after the expiration of the term in said lease specified.

(G. S. 1866, c. 84, § 15; G. S. 1878, c. 84, § 15; as amended 1881, Ex. S. c. 9, § 5.)

§ 6123. Proceedings not to be dismissed for want of form.

In all cases of appeal under the provisions of this chapter, the appellate court shall not dismiss or quash the proceedings for want of form only, provided they have been conducted substantially according to the provisions of this chapter.

(G. S. 1866, c. 84, § 16; G. S. 1878, c. 84, § 16.)

§ 6124. Amendments may be allowed.

Amendments may be allowed by the court, at any time before final judgment, upon such terms as to the court appear just, in the same cases and manner, and to the same extent, as in civil actions.

(G. S. 1866, c. 84, § 17; G. S. 1878, c. 84, § 17.)

MINNESOTA STATUTES 1894

§§ 6125-6127 FORCIBLE ENTRIES AND UNLAWFUL DETAINERS. [Ch. 84

§ 6125. Answer, what to contain.

All matters in excuse, justification or avoidance of the allegations in the complaint, shall be set up in the answer.

(G. S. 1866, c. 84, § 18; G. S. 1878, c. 84, § 18.)

This language is very broad and comprehensive, and would seem to embrace every character of defense which would defeat the complainant's right to a restitution. *Steele v. Bond*, 28 Minn. 272, 9 N. W. Rep. 772.

Judgment on the pleadings may be ordered. *Norton v. Beckman*, 53 Minn. 456, 55 N. W. Rep. 603.

Equitable matter, which requires affirmative relief to make it a defense per se, cannot be interposed. *Petsch v. Biggs*, 31 Minn. 392, 18 N. W. Rep. 101; *Norton v. Beckman*, supra.

§ 6126. Compelling return from justice.

The appellate court has power to compel the justice, by attachment, to make or amend any return which is withheld, or insufficiently or improperly made.

(G. S. 1866, c. 84, § 19; G. S. 1878, c. 84, § 19.)

§ 6127. Schedule of forms.

The following or equivalent forms shall be used in proceedings under this chapter, to wit:

Form of Summons.

State of Minnesota, }
County of _____, } ss.

The State of Minnesota,

To the sheriff or any constable of the county aforesaid:

Whereas, _____, of _____, hath exhibited unto a justice of the peace, in and for said county aforesaid, a complaint against _____ of _____, for that the said _____, on the _____ day of _____, at _____ (here insert the substance of the complaint with legal certainty;) therefore you are hereby commanded to summon the said _____, if to be found in the said county, to appear before me at _____, on _____ day of _____, at _____ of the clock in the _____ noon, then and there to make answer to, and defend against the complaint aforesaid, and further to be dealt with according to law; and make due return to me of this summons, with your doings thereon.

Dated at _____, this _____ day of _____, in the year one thousand, eight hundred and _____.

J. P., justice of the peace.

Form of Writ of Restitution.

State of Minnesota, }
County of _____, } ss.

The State of Minnesota.

To the sheriff or any constable of the county aforesaid:

Whereas, _____, of _____, at the court of inquiry of an unlawful or forcible entry and unlawful detainer, held at _____ in the county aforesaid, on the _____ day of _____, one thousand eight hundred and _____, before _____, a justice of the peace in and for the county aforesaid, by the consideration of the court, recovered judgment against _____, of _____, to have restitution of _____ (here describe the premises as in the complaint); therefore you are hereby commanded, that, taking with you the force of the county, if necessary, you cause the said _____ to be immediately removed from the aforesaid premises, and the said _____ to have peaceable restitution of the same; you are also hereby commanded, that of the goods and chattels of the said _____, within said county, you cause to be levied, and, the same being disposed of according to law, to be paid to the said _____, the sum of _____, being the cost taxed against said _____, for the said _____, at the court aforesaid, together with twenty-five cents for this writ; and thereof, together with this writ, make due return, within thirty days from the date hereof, according to law.

Dated at _____, the _____ day of _____, one thousand eight hundred and _____.

J. P., justice of the peace.

MINNESOTA STATUTES 1894

Ch. 84]

FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.

§. 6127

Form of Verdict.

At a court of inquiry, held at —, on the — day of —, one thousand eight hundred and —, before —, a justice of the peace in and for the county of —, —, complainant, against —, respondent, the jury find the facts alleged in the said complaint are true, that the said — is guilty thereof, and the said — ought to have restitution of the premises therein described, without delay; (or, in case the jury do not find the allegation of complaint proved, the jury find that the facts alleged in the same complaint are not proved, and that the said — is not guilty thereof).

C. D., foreman.

J. P., justice of the peace.

(G. S. 1866, c. 84, § 20; G. S. 1878, c. 84, § 20.)

(1655)