

## **RENT GARNISHMENT SHOULD WORK LIKE WAGE GARNISHMENT AND APPLY FOR 90 DAYS AT A TIME**

### Summary

Collecting judgments for unreturned security deposits or other small judgments against landlords can be difficult. This is especially true with smaller or disreputable landlords who shuffle bank accounts and otherwise hide assets. Their one regularly available asset is their rent roll, but garnishing or levying on rent paid by incumbent tenants faces a significant hurdle. The window to garnish or levy on rent is very tight. It must be done after rent is due but before the tenant has paid the rent. This is unlike another common periodic income stream -- wages, where the garnishment or levy attaches for 90 days after service of the garnishment or levy. New legislation<sup>1</sup> applying the same 90-day rule to garnishment and levy of rent is needed.

### The Problem

Suppose you are a tenant who won a lawsuit against your landlord and have a judgment against him for \$1500. You ask the landlord to pay but he either ignores you or says he won't. How do you collect?

Like most judgment creditors, the first thing you consider is levying on the bank account of the judgment debtor (your former landlord). However, the problems start. The landlord refuses to provide his banking information even when served with an order for disclosure. Or he lies about it. Or he tells you and then before you can act he changes banks. Or you got a judgment against him but he banks under a different name and so your judgment doesn't reach that bank account. Or you levy on that account and the bank reports that there is very little money in the account and send you a check for all \$13 in the account; it turns out the landlord regularly transfers out all incoming money in the account. Or the account is in another state, or worse, another country. Or the judgment debtor doesn't even use a bank and collects rent via PayPal, some sort of credit card system or in cash.

These scenarios are all common maneuvers by shady landlords trying to avoid paying their debts. Reputable landlords generally don't use these schemes and also generally pay their judgments (even reputable landlords lose some of their cases).

Next, you consider foreclosing on the building you lived in or other real estate owned by the judgment debtor. This has several problems. First, it might not be in the name of the judgment debtor (same sort of issue as above). Second, it might be mortgaged to the hilt so there is nothing to gain by doing a judgment foreclosure. Third, the cost and difficulty of doing a judgment foreclosure makes it impractical for collecting a small judgment or even a medium judgment.

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<sup>1</sup>Current Minnesota Statutes and session Laws are available at <https://www.revisor.mn.gov/>.

Next you consider levying the landlord's wages or salary. Unfortunately, he doesn't have a job with wages or salary. He makes his money from collecting rents. Or, as before, your judgment is against the corporation you paid rent to, e.g. Manor Estates Inc., not the man who owns all the stock in Manor Estates, Inc. Or, he has a job but it is another state, making a levy difficult; or in a different country and effectively unreachable.<sup>2</sup>

What about having the sheriff<sup>3</sup> seize and sell his car (in legalese, "executing" on the car)? Seizing a vehicle requires significant up front payments to the sheriff. Also, the sheriff demands a fair amount of information, including the amount of outstanding loans on the vehicle, which can be hard to obtain. Moreover, it turns out that his car is not fancy enough or is fancy but is burdened by a big loan, making it ineligible for levy because lower-net-value vehicles cannot be seized for levy.<sup>4</sup>

What about seizing other valuable items? Some items are exempt from seizure.<sup>5</sup> Others, like a valuable stamp collection, are hard to value and hard to sell, are not commonly owned, and usually not known to the tenant even if the landlord owns them.

What if the landlord rents under the HUD Section-8 program or the USDA Rural Development program and so he gets regular payments from the housing authority, HUD or the USDA? HUD, perhaps correctly, takes the position that these payments are not subject to levy.<sup>6</sup>

### How About Intercepting Rent?

Aha you think, what about intercepting rent the landlord is collecting from his current tenants? This is a good idea but it presents a serious hurdle. To explain the hurdle, I first briefly summarize how garnishments and levies work.<sup>7</sup>

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<sup>2</sup>E.g., I once had to collect a judgment owed by a foreign service officer. She had rented her home in Minnesota to my clients but was working in India.

<sup>3</sup>"Sheriff" includes her deputies.

<sup>4</sup>Minn. Stat. § 550.37 subd. 12a. ("One motor vehicle to the extent of a value [net equity] not exceeding \$4,800 [is exempt from attachment].")

<sup>5</sup>See Minn. Stat. § 550.37 for the list.

<sup>6</sup>See <http://www.hdli.org/noteworthy/201308.HUD.Letter.6-27-13.pdf> and discussion in <http://www.hdli.org/noteworthy/201407.Memorandum.of.Law.in.Opposition.to.Judgment.pdf>

<sup>7</sup>Garnishments, levies and attorney summary executions are governed by Minn. Stat. Chapters 550, 551 and 571. For the most part this discussion will not include pinpoint cites to individual statutes.

Garnishments and levies both start with the judgment creditor, his attorney or the sheriff serving garnishment or levy papers on a third party who owes money to the judgment debtor. The main difference between garnishment and levy is that with a levy the third party delivers the levied money to the sheriff or attorney who performed the levy,<sup>8</sup> but with a garnishment, the third party (“garnishee”) sets the garnished money aside for up to 270 days. Sometime during the 270 days, the sheriff or attorney serves a writ of execution on the garnishee, who then turns the money delivers the money to the sheriff or attorney.<sup>9</sup>

However, there is a catch. Garnishments and levies only attach money the third party owes to the judgment debtor but has not paid at the moment she is served the levy or garnishment papers. For example, the garnishment statute says,

the service of a garnishment summons under this chapter attaches ... money ... belonging to the debtor and owing by the garnishee or in the possession or under the control of the garnishee at the time of service of the garnishment summons

[and]

The following property is not subject to attachment by garnishment:

(1) any indebtedness, money, or other property due to the debtor, unless at the time of the garnishment summons the same is *due absolutely or does not depend upon any contingency*;

Minn. Stat. § 571.73, subd. 3-4.<sup>10</sup>

As an example, garnishments and levies only attach rent that is actually owed when the tenant in question is served the garnishment or levy papers but has not been paid. E.g. if rent is due on the first of the month, service of the papers on May 31st does not attach June rent. And, if the tenant pays June rent at 10 am on June 1st and is served papers at noon on June 1st, nothing is attached because by then nothing is owed. The italicized language above backs up this rule because, even if the lease has months to go, on May 31st the June rent is contingent on the premises not being destroyed before June. Case law supports this rule. See *Ambrozich v. City of Eveleth*, 200 Minn.

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<sup>8</sup>Attorneys as well as sheriffs can levy on money. The only real difference is that attorneys are limited to \$10,000 per levy. Minn. Stat. § 551.01.

<sup>9</sup>If 270 days pass without service of a writ, the garnishee sends the money to the judgment debtor. Also, Minnesota law allows the judgment creditor to do his own garnishment or to retain an attorney to do it.

<sup>10</sup>The levy statutes have similar language. Minn. Stat. § 550.135, subd. 3-4 (levy by sheriff); Minn. Stat. § 551.04, subd. 2-3 (attorney summary execution).

473,484-485, 274 N.W. 635,640-641 (1937).<sup>11</sup>

Thus rule makes garnishment or levy of rents difficult. Garnishment or levy papers have to be served in person or by certified mail.<sup>12</sup> It's essentially impossible to control when a garnished or levied tenant gets his certified mailpiece. The timing of personal service can be controlled but only if the process server knows where the garnished or levied tenant is at a given time. Thus a successful rent garnishment or levy requires a bit of luck. Usually this means finding a tenant who waits a few days after the first of the month before paying. Even then the garnishment or levy is only good for that month; next month the process has to start again.

Rent garnishments do work and I've done some successfully. However, the successful ones usually involved either [1] having a judgment creditor's friend who is still a tenant of the landlord actively cooperate with the garnishment; or [2] serving a number of tenants in a building or buildings owned by the landlord and by statistical chance hitting one or two at the right time.

### Legislation

Minnesota garnishment and levy law offers a model for solving this problem. The model is garnishment and levy of "earnings", i.e. of wages and salaries of employees. Unlike other garnishments and levies, one service of garnishment or levy papers attaches earnings for each payday during the next 90 days.<sup>13</sup>

New legislation could apply the same rule to garnishment or levy of rent, applying it to each payment of rent due in the 90-day period after the garnishment or levy papers are served. In a real sense, the periodic rent payments are the monthly "paydays" for a landlord. Therefore, applying the same rule is sensible.

One concern is that disreputable landlords will decide to "solve" their problem of being garnished or levied for 90 days by terminating the lease of the innocent third party/current tenant who is garnished or levied. The solution is anti-retaliation language. For example, the legislation could include language like the following:

A tenant may not be evicted or have the tenancy terminated, nor may the tenant's obligations under a lease be increased or the services decreased, if the eviction,

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<sup>11</sup>Available at <https://casetext.com/case/ambrozich-v-city-of-eveleth>

<sup>12</sup>Minn. Stat. § 550.135, subd. 3; Minn. Stat. § 551.04, subd. 4; Minn. Stat. § 571.73, subd. 2.

<sup>13</sup>The period used to be 70 days but recent legislation changed the period to 90 days. See the various changes from "70" to "90" in 2020 Minn. Laws Chapter 86, Article 4 for the applicable statutes.

termination, or increase of obligations or decrease of services is motivated by the tenant's rent being garnished, levied or made the subject of an attorney summary execution. The burden of proving otherwise is on the landlord if the eviction, termination, or increase of obligations or decrease of services occurs within 90 days after the garnishment, levy or attorney summary execution. After 90 days the burden of proof is on the tenant.

This language borrows liberally from Minn. Stat. § 504B.441. It protects both residential and commercial tenants.