

Garnishment Of Tenant Wages For Overdue Rent Or Damage To Premises

By Ronald G. Backer, Esquire

There has been a significant development in the collection of rent or other damages from a tenant of a residential lease. Effective January 21, 2006 there will be a new procedure in place by which a landlord can garnish a current or former tenant's wages to satisfy a judgment for back due rent or for damages to the Premises. At first, the process may seem complicated, but once landlords become familiar with the process, it should go smoothly.

First of all, this procedure only applies to claims related to residential leases. It does not apply to commercial leases. Second, remember that in a landlord/tenant action, you may seek possession of the premises only, rent only, or rent and possession. If all you are seeking is possession, then garnishment of wages would be inapplicable. If, however, you are seeking only rent, or rent and possession, the new procedures apply.

If a claim is made before a Magisterial District Judge for rent only, it is imperative that the complaint on its face show that the claim arises from a residential lease. If a claim is made before the Magisterial District Judge for rent and possession, then the complaint will already indicate that the dispute arises from a residential lease. In addition, in cases where you intend to seek the right to garnish wages, you must ensure that the defendant/tenant is personally served with a copy of the complaint. Other types of service (by first class mail or by posting when personal service is impossible because the tenant is not at home when the constable attempts service) may allow judgment to be entered in favor of the landlord, but will not be sufficient to allow garnishment of wages. (However, even without personal service, if the tenant files papers or appears before the Magisterial District Judge, a garnishment can be done.)

Once a final judgment is obtained before the Magisterial District Judge, the judgment must be registered as a judgment with the Prothonotary's Office. Garnishment of tenant wages can only take place through the Prothonotary and cannot take place through the office of the Magisterial District Judge.

Once the judgment is registered, the process of wage attachment is started by plaintiff/landlord filing a praecipe with the Prothonotary in the form set forth in Rule 3331 of the enclosure to this letter. The Prothonotary will then issue a notice of intent to

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attach wages. The plaintiff/landlord must then take steps to have that notice of intent to attach wages served upon the defendant/tenant by the Sheriff. It is therefore imperative that the landlord obtain a forwarding address from the tenant if the tenant has already left the premises. The document that is served upon the tenant will also advise the tenant that the tenant can obtain an exemption from the attachment if tenant's wages fall below the federal poverty income guidelines. The tenant has 30 days to make a claim for exemption with the Prothonotary.

If no claim for exemption is made with the Prothonotary within thirty days of service, or before the attachment is issued, the plaintiff/landlord may file a praecipe for writ of attachment of wages. The Prothonotary shall then serve the writ by ordinary mail to the defendant/tenant and the tenant's employer.

The writ of attachment will advise the employer that the employer is required to hold from the wages of the defendant/tenant an amount which does not exceed 10% of the net wages of the tenant. The wages are supposed to be sent by the employer in a check made payable to the Prothonotary within fifteen days from the close of the last pay period each month. The employer may deduct the cost of the bookkeeping necessary to record the transaction but not to exceed \$5.00 of the amount so collected. Once the Prothonotary receives the money, the Prothonotary will send a check to the plaintiff/landlord, but only once per month, around the end of the month.

In implementing this system, there will be a number of issues that will have to ironed out between the plaintiff/landlord, the employer and the Prothonotary but once the system is up and running, it should work smoothly. If you have questions, please contact Ron Backer at (412) 338-1113.

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