

MICHAEL P. MORTON, P.A.

E-Newsletter

March/April, 2015

"I Can't Get No Satis...faction."

By: David Zerbato, Esquire

Landlords must be cognizant of prior judgments on a tenant's account when taking a tenant to court. The failure to properly take into account an old judgment may prove fatal to your current case.

Anytime a landlord obtains a monetary judgment against a tenant, the ledger should be zeroed out at that time.

On a daily basis, landlords are faced with tenants who have failed to pay their rent in a timely manner. Ultimately, if such failure continues, a summary possession or debt action will be filed against the tenant resulting in a judgment for the unpaid balance and possibly possession of the rental unit. However, as a practical matter, landlords frequently offer a payment plan, or rely on promises of forthcoming payment to forbear on requesting the writ of possession and allowing the tenant to remain in the rental unit. While some tenants are able to pay their debt, many others are not able to fully pay off the judgment, although they may be allowed to remain in the rental unit for one reason or another, particularly if they are paying the current rent as it becomes due. Thus, the judgment remains unsatisfied but the tenant is permitted to remain in the rental unit. Months or years may pass, but eventually the tenant once again begins to have problems paying the rent.

Spring Edition



Welcome to the March/April Spring Edition of our E-Newsletter. We have combined this edition to bring you more information on timely subjects such as Satisfaction of Judgments and being properly prepared for Court.

EXCITING NEWS TO SHARE!

We are expanding our law firm to help meet the needs of our clients. We will be opening a new office location downstate in the near future. In the May newsletter we will introduce you to new personnel and update you on the status of current personnel so that you can get to know us better.

The landlord has had enough and now intends to file in court to get possession of the rental unit. The landlord reviews the ledger and finds a large outstanding balance. Unbeknownst to the landlord, the balance consists of both the balance of the old judgment and current unpaid rent. The landlord follows its normal procedure, files in court and obtains a trial date. The landlord and tenant appear in court, the landlord confident the tenant's time in the rental unit is at an end. The judge reviews the paperwork, and just when the landlord believes it is about to obtain a judgment, the tenant states that the amount is incorrect. Specifically, the balance being sought is overstated as it included the balance from the old judgment. The tenant hands the judge a copy of the previous judgment while the landlord frantically looks through their paperwork. The judge reviews the old judgment and ledger. Sure enough, the judge sees that the judgment balance was kept on the ledger and included in the new complaint and violation letter. The judge dismisses the case and the landlord is forced to start from the beginning.



The solution to this problem is simple and straightforward. Anytime a landlord obtains a monetary judgment against a tenant, the ledger should be zeroed out at that time. This prevents the problem of overstating a subsequent non-payment letter and the substantial risk that any subsequent summary possession action will be

dismissed by the Court. Moreover, even if a landlord is aware that they may not include the balance of a previous judgment in a new filing, it ensures that the old amount is not mistakenly added to the new non-payment letter and complaint thereafter. It is all too easy to simply look at the total balance on the ledger, particularly if the prior judgment was several years old. Zeroing the balance at the time of the judgment is also critical if using management or accounting software which automatically generates late notices. The software will not be able to differentiate between a prior judgment balance, and the current balance. The result being an overstated late notice and dismissal of the landlord's summary possession action.

While some judgments may be paid by the tenant, most will remain as an outstanding balance. It is critical to ensure any amount included in a late notice or complaint is correct. This requires close attention to prior judgments and proper accounting of any judgment balance.

"Judgment Day"

By: **Robert Valihura, Esquire**

Any judgment you receive is good for five (5) years, unless revived, in the Justice of the Peace Court. After that period, it is no longer enforceable against the former tenant. If you want it to be enforceable for a longer period, the landlord will need to move to transfer that judgment to the Superior Court where it will be valid for ten (10) years, and possibly longer.

The end draws near when a tenant or a former tenant pays off the amount owed from a judgment. Yet, your work is not done. You must satisfy that judgment. A judgment in the Justice of the Peace Court can be satisfied simply by sending a letter with the case caption, and matter number, and indicating that the judgment has been paid and that the matter should be marked satisfied.¹

Ninety (90) days from the date of the payment, if the judgment is not satisfied, a tenant can bring an action against the landlord for up to one half (1/2) the amount of the judgment!

This is a critical final step in any case. If landlord used legal counsel, you must inform counsel that the judgment has been paid so that the case can be marked satisfied. If the landlord handled the matter in house, the landlord must file the letter noting that the matter is satisfied.

A failure to satisfy the Justice of the Peace Court judgment has particularly catastrophic financial consequences for a landlord. Ninety (90) days from the date of the payment, if the judgment is not satisfied, a tenant can bring an action against

the landlord for up to one half (1/2) the amount of the judgment!

Like the penalty for not returning a security deposit within 20 days, the intention of the law is to ensure that the final act in connection with the rental relationship is completed.

Given the size of a number of judgments this office has seen, a claim for one half times the amount of the judgment could turn the tables on the landlord from extra income from collecting on an old debt to being swamped by a new and unexpected one.

Avoid the doomsday scenario, satisfy any judgment immediately upon receipt of full payment.

“Charging” Into Court

By: David Zerbato, Esquire

Being properly prepared for Court is critical to your case. Failure to ensure your paper work and evidence is in proper order may lead to the dismissal of your case and force you to start the process from the beginning. One of the most common documents you will use at court is the ledger. You must ensure the ledger you use for court **only** has entries for rent and late fees included.

¹ The Justice of the Peace Court also offers a form for the satisfaction of judgment. It can be found on the Court’s

website and is J.P. Civ. Form 36. The form is also attached to this Newsletter.

All too frequently, the ledger is erroneously filled with charges for damages, returned check fees and most egregious, un-awarded court costs. These charges not only complicate your case, but will often cause your five day letter to be overstated, and, therefore, defective. Further, upon review of such ledgers, judges will frequently see charges that are either improper, i.e. un-awarded court costs, or charges which cause the judge to further investigate the amount stated in your five day letter which may lead to a determination that it is defective. When this happens, your case will fall apart quickly and the advantage will immediately turn to the tenant. Luckily, this situation can be easily prevented. Simply ensure that when you go to court, the

ledger you use only contains entries for rent and late fees, and that those charges coincide with the amounts contained in the 5 day letter and any receipts the tenant may have for payment. Anything that is not rent or late fees must not be included. This makes your case simple and straightforward for the judge, and avoids unnecessary red herrings, or worse, the determination that your 5 day letter is defective.

Thank you for reading our newsletter.

If you have any topics that you would like to see addressed in future newsletters, please email David Zerbato at dzerbato@michaelpmorton.com

Links in this newsletter: Satisfaction of Judgment Form

<http://courts.delaware.gov/forms/list.aspx?ag=justice+of+the+peace>

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SATISFACTION OF JUDGMENT – JUSTICE OF THE PEACE COURTS FORM

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR _____ COUNTY
COURT NO. _____

SATISFACTION/DISMISSAL/WITHDRAWAL OF JUDGMENT

PLAINTIFF (ID#: _____)

VS

CIVIL ACTION NO. _____

OR DATE FILED _____

DEFENDANT (ID#: _____)

I request to do the following with the above captioned case:

_____ **Satisfy** (case is paid after judgment).

_____ **Withdrawal/Dismiss without prejudice** (any case before trial or judgment) the case because _____

*** It is the Plaintiff's responsibility to notify the court in writing when the judgment has been paid in full or satisfied. If Plaintiff does not, after 90 days of payment in full, the Defendant may sue the Plaintiff for an amount not to exceed half the judgment.

*** Along with notifying the Court it is the Plaintiff/Judgment Creditor's responsibility to notify the employer (if a wage attachment exists) when the judgment has been paid in full.

DATE

PLAINTIFF/JUDGMENT CREDITOR