

Collecting Money Owed by a Tenant

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Did you ever have to evict a tenant for non-payment of rent, then get stiffed for the bill? You may be able to collect what is owed to you, even years later.

First, you need a court-ordered money judgment. If you filed for an eviction in court, you received a judgment and order of possession. The actual name of this court order may change slightly from state to state, but it's the same thing - a document signed by a judge that permits a local sheriff or constable to forcibly remove the tenants from the property.

But, considering a judgment may be valid for as long as 10 years and you get interest on your money, why not make it a part of your business practice?

In most states you can also get a money judgment against the tenant, but this requires one of two things: 1) the tenant must have been personally served with the court papers or 2) the tenant must have shown up in court. If the eviction papers (the court papers, not the notice to pay rent) were posted on the door of the unit and/or mailed to the tenant, you generally do not get a money judgment from the court.

What About Security Deposits?

If you have a security deposit from the tenant, you can apply that against anything he owes you for back rent or damages. However, you still must comply with state law for notifying the tenant of your intent to keep the deposit. Even if you return the security deposit, you can still sue the tenant for actual rent owed and/or damages incurred to the unit.

If the tenant left before the court date or you did not otherwise get a money judgment, you can always sue the tenant in your local small claims court for money owed and any damages to the property. The process is quite simple, and does not require a lawyer. You have to file the claim before the end of the statute of limitations, which generally ranges from three to six years, depending on which state you live in.

Once you have a money judgment, you can collect it against all non-exempt assets of the debtor. Certain assets, such as retirement accounts, are exempt from collection by creditors. Also, keep in mind that assets of the debtor's spouse may be attached as well in states that recognize community property (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin).

Cash in bank accounts is the easiest target. If you have a copy of a recent check from your tenant, you can file for a "levy of execution" on their bank accounts through the local sheriff (this is why it is a good practice to make copies of your tenants' checks each month to make sure you know where they are banking).

If the tenant is working, you can garnish wages, but most states limit garnishment to 25% of the wages of the debtor. Still, if they have a steady paycheck, you will get your money back, plus interest. If you get a transcript and record the judgment in county records, the tenant will not be able to buy a house in that county without paying you off. If the tenant owns other real estate in his name (not likely, but always possible), the judgment will create a lien on that property as well.

If you do not know where the tenant's assets are located, you can start a debtor proceeding in court to make him appear in court and answer questions regarding his assets. Failure to comply may result in a warrant issued for the debtor's arrest. Depending on the amount of money owed and likelihood of collecting, this process may not be worth your effort. But, considering a judgment may be valid for as long as 10 years and you get interest on your money, why not make it a part of your business practice?

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