



Garnishment

What is a garnishment?

Garnishment is a legal proceeding where you can claim money owed to the debtor by someone else which is applied to the payment of the debt owed to the creditor.

In the context of a landlord and tenant relationship, a garnishment is used to claim money owed to the tenant by someone else, such as an employer or financial institution.

Garnishment is one of the methods a landlord may use for collection of monies owed by the tenant as ordered by the Landlord and Tenant Board.

The landlord must initiate the garnishment process to collect the money owing and, to be successful, must have information that will lead to money owed to the tenant, either employment information or a bank account.

- If the landlord has information about the tenant's current employment, a garnishment can be filed against the employer to seize a percentage of the former tenant's wages (20%).
- If the landlord has information about a bank account held by the tenant with funds on deposit, a garnishment may be filed to seize funds to satisfy the amount awarded in the order.

I obtained an order from the Landlord and Tenant Board against my tenant for arrears of rent. I know where the tenant works, should I confirm his employment?

Yes. In addition to confirming the debtor's place of employment, the landlord should do a search of the company name at the Ministry of Government and Consumer Services. The cost for a search is minimal and it will ensure you have the true company name. Many companies operate under a name different from the one that is registered. If you issue a garnishment under the wrong company name it is worthless and you would have to start the process from the beginning.

For more information, visit <https://www.ontario.ca/page/register-business-name-limited-partnership>

Can I request payment for damages the tenant caused to the rental unit?

If damages were included in the amount ordered, yes.

If the order did not include an amount for damages and the tenant vacated the rental unit before September 1, 2021, you will have to file a claim against the debtor in the Small Claims Court detailing the costs incurred by the landlord to repair the damage. When the Small Claims Court process is completed, a judgment will be issued and the landlord may begin another garnishment to satisfy that judgment.

If the tenant vacated the rental unit on or after September 1, 2021, you will have to file a L10: Application to Collect Money a Former Tenant Owes with the Landlord and Tenant Board. This must be filed within one year of the tenant vacating the rental unit.

How and where do I apply for garnishment?

The garnishment process is administered by the Small Claims Court. You will need a copy of the order issued by the Landlord and Tenant Board, a completed affidavit, notice of garnishment and garnishee statement.

Where can I obtain the garnishment documents?

Garnishment documents can be picked up at any Small Claims Court office. The forms are also available online at

<http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/index.php>

Where are the garnishment forms filed?

Small Claims Courts can be found in various locations across Ontario. The garnishment **must be** filed in the court that has jurisdiction over the area where the debtor resides or carries on business.

Visit <http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/index.php>

and follow the list to "List of Small Claims Courts". When filing your completed notice of garnishment and two copies and the sworn affidavit, the court will keep the original notice of garnishment and the sworn affidavit. Two certified copies of the notice of garnishment will be returned to you.

What is the cost for filing a garnishment in Small Claims Court?

You will be required to pay the court a \$136.00 filing fee and a \$45.00 fee for registering the Landlord and Tenant Board order. ****Note:** There may be other fees associated with garnishment as well.

Can I recover my filing costs?

All the costs that were incurred when filing the garnishment can be claimed. You may also include all costs relating to the eviction of the tenant, such as the fees paid to the sheriff's office. All receipts will have to be included with the garnishment to prove your costs.

Are both the debtor and the garnishee served with a copy of the Notice of Garnishment?

The Notice of Garnishment is served on both the garnishee and debtor.

- You may serve the debtor, by mail or personal delivery.
- The garnishee should be served at the business address either personally or by mail. The garnishee must also be served with the **Garnishee Statement**.

NOTE: Documents served by mail are deemed to be effective on the fifth day following the date of mailing.

Are further forms required after serving the Debtor and Garnishee?

Two Affidavits of Service must be completed. They will specify the date and method of service on each the Debtor and Garnishee. The Affidavits of Service must be sworn by the person who delivered the documents, and be filed with the court.

How long does the Garnishee have to respond to the Garnishment?

The Garnishee must respond to the Notice of Garnishment within **ten** days. Proof of service (affidavit of service discussed above) is required is to document the date on which the Garnishee/Employer was served with the Notice of Garnishment and the Garnishee Statement.

The Garnishee must complete and file with the clerk the garnishee statement. The statement sets out reasons why they will not garnish the debtor's wages or to provide information relating to the pay period and gross wages and amounts deducted.

How will I be informed of the information provided in the garnishee statement? A copy of the garnishee statement should also be mailed to the creditor. You should wait approximately one month to be contacted by the court office. If the court hasn't contacted you or you have not received a copy of the garnishee statement by that time, you should contact the court office to determine whether remittances have been made by the garnishee.

What reasons might the garnishee (employer) have not to garnishee the wages?

There could be many reasons, perhaps the debtor is no longer employed by that company, is on a leave of absence or was laid off. There are also considerations regarding garnishment for child support payments which take priority.

How long will it take for my judgment/order to be satisfied?

It's difficult to predict how long it will take to satisfy the judgment/order since the amounts recovered will depend on many circumstances, including: the amount the debtor earns, the frequency of pay period, and whether other creditors are garnishing his/her wages.

How much of the tenant's wages may be garnished?

Garnishment of wages is restricted to 20% per pay period. This is regulated by section 7 of the *Wages Act*. If there is more than one creditor, the payment received by the clerk will be equally distributed among all the creditors who have filed a request for garnishment and have not been paid in full.

Does a notice of garnishment expire?

A notice of garnishment that is filed in Small Claims Court is valid for 6 years. If you are unable to collect the full amount owing during that time you will have to file another Notice of Garnishment before the current one expires.

How will I collect the payments that are made by the Garnishee?

After proof is filed confirming the notice of garnishment was served on the debtor, the clerk at the Small Claims Court will distribute payments received to creditors that have filed a notice of garnishment.

For more information on the garnishment process visit the Small Claims Court Guide at <https://www.attorneygeneral.jus.gov.on.ca/english/courts/guides/AfterJudgementGuideGettingResultsEN.html>

Small Claims Court: Office Hours-Monday to Friday 8:30 am-5:00 pm. Visit <http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/index.php> for a list of locations province-wide.

Toronto:

47 Sheppard Ave East, 3rd floor,
Toronto, M2N 5N1,
416-326-3554

Hamilton/Wentworth:

John Sopinka Court House
45 Main St. E., Suite 108
Hamilton, L8N 2B7
905-645-5252

Brampton/Peel:

Land Registry Bldg.,
7765 Hurontario St., 2nd floor,
Brampton, L6V 2L7,
905-456-4744

Newmarket/York Region:

50 Eagle Street West, 2nd Fl.,
Newmarket, L3Y 6B1
905-853-4809

Ottawa/Carleton:

161 Elgin Street, 2nd floor,
Ottawa, K2P 2K1
613-239-1079

Whitby/Durham:

605 Rossland Rd. E.
Whitby, L1N 9G7
905-430-5800

The **Residential Tenancies Act Fact Sheets** are intended to help landlords better understand their rights and responsibilities. They are not intended as legal advice but rather as general information.

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