

Memo: Who Takes the Risk of Loss or Delay When Rent Is Mailed

The parties may agree on a place of payment. Balme v. Wambaugh, 16 Minn. 116 (Gil 106) (1870)¹. *Accord*, 70 C.J.S. § 10 (2005)².

Where no place of payment is agreed on, the debtor has the duty to make payment where the creditor may be. Branch v. Dawson, 33 Minn. 399, 23 N.W. 552 (1885); Merritt v. Joyce, 117 Minn. 235 , 135 N.W. 820 (1912) . Where the creditor “may be” probably means his residence or place of business. 60 Am.Jur.2d § 13 (2014).

However, the debtor does not have to follow the creditor out of state. Gill v. Bradley, 21 Minn. 15 (1874); Merritt, supra; Johnson v. U.S. Credit Union, File Nos. A10-857, A10-1583 (Minn. Ct. App. 6/10/11, unpublished) ("It is ordinarily the duty of the debtor to seek the creditor for the purpose of making payment, provided the creditor is within his or her state of residence when the payment is due . . ." citing 70 C.J.S. Payment § 10 (2005)); *accord* 60 Am.Jur.2d § 13 (2014).

Moreover, payment may be made by mail where, “by the creditor's express direction or assent, by the usual course of dealing between the parties, or by other facts from which such direction or assent may be inferred, the creditor has authorized such delivery. The enclosure of an addressed envelope, with a request to use it in sending a remittance, authorizes mailing the remittance. 60 Am.Jur2d § 17 (2014). *Accord*, 70 C.J.S. Payment § 11 (2005).

There does have to be an actual request of this sort. Merely providing an envelope as a courtesy is not a request. This issue has come up in a number of cases involving a customer sending money to his bank by mail using a preprinted envelope. E.g. see, Cornwell v. Bank of America, 224 Cal. App. 3d 995 (Cal. Ct. App., 4th Dist 1990) (bank accepted payments by a variety of methods like walk in-deposits, automatic transfer, wire transfer, etc; this did not constitute authorization to use the mail).

Under this "mailbox" rule, a payment is made when a letter containing a remittance, properly addressed and with postage prepaid, is deposited into the mail. 60 Am.Jur.2d § 11 (2014). *Accord*, 70 C.J.S. Payment § 11 (2005).

I did not find a Minnesota case specifically stating this mailbox rule, but in Yellow Mfg Acceptance Corp. v. Zimmerman, 265 Minn. 303, 121 N.W.2d 586 (1963), the court held that where the parties have specified that payment was to be made by mail or adopted such by course of conduct, breach by non payment occurs in the debtor's county of domicile, not the creditor's.

In short, if the tenant and landlord have agreed explicitly or by course of conduct that rent is to

¹Links to copies of the cited cases are given at the end of the memo.

²Copies of the secondary sources cited should be available here:
<http://homelinemn.org/scans/MAILED%20PAYMENT%20SECONDARY%20SOURCES.pdf>

be paid by mail, payment is good upon mailing and the landlord bears the risk of loss or slow delivery. This situation typically arises in three situations: [1] The landlord lives far from the tenant. [2] The landlord is trying to hide and only gives the tenant a post office box. [3] The landlord is like Towers Management, which asks tenants to mail rent to a post office box even though Towers does disclose its office address on the lease.

In a fourth situation, the tenant can also argue that mail payment is requested – when the landlord does not say explicitly where to pay but lives out of state (where the tenant is not required to locate him, *supra*) and thus the tenant could argue that it is enough to find an in-state mailbox. I am not aware of any appellate case ruling on this issue.

Finally, in some cities, e.g. Minneapolis and Brooklyn Center, a city ordinance requires the landlord to provide a local contact person (e.g. in the local 16 counties for Minneapolis). Again, I think a tenant could argue that if the ordinance is violated, the tenant may pay rent by using a mailbox in the local area. As with the prior situation, I am not aware of any appellate case ruling on this issue. Referee Gallant did dismiss one case under Minn. Stat. § 504.22 (now codified at 504B.181) for lack of a local agent for service of process,: Anda Construction v. Peoples, No. UD-01970321516 (Minn. Dist. Ct. 4th Dist. Apr. 2, 1997) (reprinted as Appendix 244 in McDonough's Eviction Defense manual)

Links to Copies of the Cited Cases

Balme v. Wambaugh, 16 Minn. 116 (Gil 106) (1870)

<https://books.google.com/books?id=wckUAAAAYAAJ&pg=PA116&dq=joshua+balme+alois&hl=en&sa=X&ei=doC2VMrAIoSwyATO04DwAQ&ved=0CCEQ6AEwAA#v=onepage&q=joshua%20balme%20alois&f=false>

Branch v. Dawson, 33 Minn. 399, 23 N.W. 552 (1885)

<https://books.google.com/books?id=jAU8AAAAIAAJ&pg=PA552&dq=copartners+secombe+branch&hl=en&sa=X&ei=w8-1VN3qN4KqyATg94LQBg&ved=0CB8Q6AEwAA#v=onepage&q=copartners%20secombe%20branch&f=false>

Merritt v. Joyce, 117 Minn. 235 , 135 N.W. 820 (1912)

<https://books.google.com/books?id=nOshDIBradgC&pg=PA820&dq=Merritt+joyce+court+1912&hl=en&sa=X&ei=P9C1VNKKBIa0yATJ8YGYAg&ved=0CB8Q6AEwAA#v=onepage&q=Merritt%20joyce%20court%201912&f=false>

Gill v. Bradley, 21 Minn. 15 (1874)

https://books.google.com/books?id=4d0UAAAAAYAAJ&pg=PA17&dq=%22Helen+E.+Savage%22+court&hl=en&sa=X&ei=ooS2VOeZKJKXyQTt_oGIAg&ved=0CB8Q6AEwAA#v=onepage&q=%22Helen%20E.%20Savage%22%20court&f=false
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Johnson v. U.S. Credit Union, File Nos. A10-857, A10-1583 (Minn. Ct. App. 6/10/11, unpublished)

<http://mn.gov/lawlib/archive/ctapun/1106/opa100857-0620.pdf>

Cornwell v. Bank of America, 224 Cal. App. 3d 995 (Cal. Ct. App., 4th Dist 1990)
https://scholar.google.com/scholar_case?case=12127872803456224414&hl=en&as_sdt=6,24

Yellow Mfg Acceptance Corp. v. Zimmerman, 265 Minn. 303, 121 N.W.2d 586 (1963)
https://scholar.google.com/scholar_case?case=8286446098975087573&hl=en&as_sdt=6,24

Anda Construction v. Peoples, No. UD-01970321516 (Minn. Dist. Ct. 4th Dist. Apr. 2, 1997)
<http://evictiondefense.pbworks.com/f/Anda+Construction+v.+Peoples%2C+No.+UD-01970321516.pdf>