

FILED
6/2/2025 12:00 AM
Mariyana T. Spyropoulos
CIRCUIT CLERK
COOK COUNTY, IL
20251707919
Courtroom, 1302
32941983

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
FIRST DEPARTMENT, MUNICIPAL DIVISION**

BRANDON MCGIVERN,)
)
Plaintiff,)
)
v.)
KYLE HADLEY,)
)
Defendant.)
)

Case No. **20251707919**

**EMERGENCY MOTION FOR CLARIFICATION REGARDING REJECTED
RENT PAYMENT**

NOW COMES Plaintiff, BRANDON MCGIVERN, Pro Se, and respectfully moves this Honorable Court for an order clarifying that Plaintiff's rejection and return of an unsolicited payment from Defendant does not constitute acceptance of rent or waiver of the pending eviction proceedings, and to prohibit further such payments. In support thereof, Plaintiff states as follows:

1. This motion is brought on an emergency basis as Defendant, Kyle Hadley ("Defendant"), tendered an unsolicited payment to Plaintiff, Brandon McGivern ("Plaintiff"), on June 1, 2025, after the termination of the tenancy and during the pendency of this eviction action. Plaintiff immediately rejected and returned said payment. Failure to obtain prompt clarification from this Court regarding the effect of this rejected payment could prejudice Plaintiff's rights and remedies in this action, particularly if Defendant were to argue waiver of the eviction.

2. On or about May 18, 2025, Plaintiff filed this eviction action against Defendant for possession of the premises commonly known as 6122 N Winthrop Ave, Unit C,

Chicago, IL 60660 (the "Premises") due to Defendant holding over after the termination of his tenancy.

3. The tenancy for the Premises terminated effective May 17, 2025, pursuant to proper notice served upon Defendant in accordance with Section 5-12-130(j) of the Chicago Residential Landlord and Tenant Ordinance ("CRLTO").

3. On June 1, 2025, despite the terminated tenancy and pending eviction action, Defendant transmitted the sum of \$2,080.00 via Zelle directly into Plaintiff's bank account. This payment was unsolicited and unauthorized by Plaintiff. A true and accurate copy of the notification Plaintiff received regarding this deposit is attached hereto as **Exhibit 1**.

4. Immediately upon discovery of this unsolicited payment on June 1, 2025, Plaintiff took the following actions:

(a) Plaintiff sent written notification to Defendant and his counsel, Mr. Cole, via email, unequivocally rejecting the payment and stating it would be returned. A true and accurate copy of this email communication is attached hereto as **Exhibit 2**.

(b) Plaintiff initiated the return of the full \$2,080.00 to Defendant via the same Zelle account from which it was received. A true and accurate copy of the notification confirming the successful return of these funds is attached hereto as **Exhibit 3**.

(c) Plaintiff prepared and is filing this instant motion to seek clarification from the Court.

6. Under Illinois law, while acceptance of rent by a landlord after initiating eviction proceedings can sometimes be construed as a waiver of the eviction, the immediate rejection and prompt return of an unsolicited or unauthorized payment demonstrates the landlord's intent not to waive their right to possession and preserves the landlord's rights. See, e.g., *Avdich v. Kleinert*, 69 Ill. 2d 1 (1977) (discussing waiver; distinguishable here due to immediate rejection).

7. Plaintiff has not, in any way, accepted this unsolicited payment. Plaintiff has acted diligently and in good faith to reject and return the funds immediately to prevent any suggestion of waiver or reinstatement of the tenancy.

WHEREFORE, Plaintiff respectfully requests this Court enter an order:

8. Declaring that Plaintiff's immediate rejection and return of the \$2,080.00 payment tendered by Defendant on June 1, 2025, does not constitute acceptance of rent;

9. Confirming that Plaintiff has not waived his right to prosecute this eviction action and that the eviction proceedings (Case No. 20251707919) remain in full force and effect;

10. Prohibiting Defendant, and anyone acting on his behalf, from making or attempting to make any further unauthorized or unsolicited payments to Plaintiff or into Plaintiff's accounts for purported "rent" or "use and occupancy" during the pendency of this action, except as may be expressly ordered by this Court; and

10. For such other relief as this Court deems just and proper.

Dated June 1, 2025

Respectfully submitted,

/s/ Brandon McGivern

Plaintiff

Brandon McGivern
5701 N Sheridan Rd, #23G
Chicago, IL 60660


Plaintiff, Pro Se

CERTIFICATE OF SERVICE

I, Brandon McGivern, a non-attorney, on oath state that on June 1, 2025, I served a true and correct copy of the foregoing **EMERGENCY MOTION FOR CLARIFICATION REGARDING REJECTED PAYMENT AND TO PRESERVE STATUS QUO**, along with copies of Exhibits 1, 2, and 3 referenced therein, upon Defendant's counsel via email to:

Mason S. Cole
mcole@colesadkin.com
Attorney for Defendant Kyle Hadley

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct.

/s/ Brandon McGivern
Brandon McGivern, Pro Se

EXHIBIT 1

Email of notification of payment SENT June 1, 2025, 4:51 am EDT

We deposited your Zelle payment

1 message

Ally Bank <email@transfers.ally.com>
Reply-To: email@transfers.ally.com
To: [REDACTED]

Sun, Jun 1, 2025 at 4:51 AM



Dear Brandon,

We have successfully deposited the \$2,080.00 Zelle® payment from KYLE HADLEY (confirmation number 4050053527) into your account (Brandon Checking - [REDACTED]).

Sign in to view the details of this payment and to check your account to see if the money is available for you to use.

Thank you for using Ally Bank and Zelle.

Zelle and the Zelle related trademarks are wholly owned by Early Warning Services, LLC and are used herein under license.

You're receiving this account servicing email as a valued Ally Bank customer.

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Ally Bank Customer Care Department, P.O. Box 951, Horsham, PA 19044.

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Email ID: ZEL913

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EXHIBIT 2

Email to attorney and tenant rejecting unsolicited payment June 1, 2025, 10:39 am EDT



Brandon McGivern [REDACTED]

Immediate Rejection and Return of Unsolicited Payment for 6122 N Winthrop Ave Unit C – Case Nos. 20251707919 & 2025CH05527

1 message

Brandon McGivern [REDACTED]
To: Mason Cole <mcole@colesadkin.com>, Kyle Hadley [REDACTED]

Sun, Jun 1, 2025 at 10:39 AM

Dear Mr. Hadley and Mr. Cole,

This letter is to formally notify you that on June 1, 2025 at 3:47am, I received an unsolicited payment of \$2,080.00 via Zelle, which appears to have been sent by Mr. Hadley.

This payment is unequivocally REJECTED and NOT ACCEPTED.

This rejection is based on, but not limited to, the following:

1. The active eviction proceedings filed against Mr. Hadley (Case No. 20251707919), with a scheduled court date of June 23, 2025.
2. Mr. Hadley's separate Chancery case filed against me (Case No. 2025CH05527).
3. My prior clear communications, and the notice previously provided, that Mr. Hadley's tenancy and right to possession of the premises at 6122 N Winthrop Ave, Unit C, Chicago, IL 60660 terminated effective May 17, 2025.

Acceptance of this payment would be contrary to my position that the tenancy has been terminated and that Mr. Hadley is a holdover tenant.

To effectuate this rejection:

1. The full amount of \$2,080.00 will be returned to Mr. Hadley via the same Zelle account from which it was received within twenty-four (24) hours of this notice. I will retain proof of this attempted return.
2. I intend to file an emergency motion or other appropriate notice with the Court in Case No. 20251707919 on the next business day to document this unsolicited payment and its immediate rejection and return, ensuring the Court is aware that no payment for rent has been accepted after the termination date.
3. All documentation regarding this unsolicited payment, its rejection, and its return will be meticulously maintained.

Please be advised that this rejection and return of funds shall not be construed as a waiver of any of my rights or remedies, including, but not limited to:

- The right to proceed with and prosecute the pending eviction case (Case No. 20251707919) to judgment and possession.
- The right to seek all applicable damages for Mr. Hadley's holdover tenancy, including holdover damages at a rate of \$166.67 per day from May 18, 2025, until possession is restored to me.
- The right to seek all legally recoverable costs, attorneys' fees, and other expenses associated with the eviction proceedings and Mr. Hadley's unauthorized holdover.

Mr. Hadley remains a holdover tenant, and his continued occupancy of the premises is unauthorized.

Please confirm your receipt of this communication immediately.

Sincerely,

Brandon McGivern
[REDACTED]

Brandon McGivern
Web Developer / Graphic Designer
[REDACTED]

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EXHIBIT 3

Email of notification of payment RETURN June 1, 2025, 10:52 am EDT

Confirmed: Your Zelle payment to Kyle Hadley

1 message

Ally Bank <email@transfers.ally.com>
Reply-To: email@transfers.ally.com
To: [REDACTED]

Sun, Jun 1, 2025 at 10:52 AM



Dear Brandon,

We're just confirming your Zelle® payment to Kyle Hadley (586-864-5194). If your contact is already registered for *Zelle*, they should get the money within the next business day, 06/02/2025.

If your contact isn't yet registered, they'll be notified within three business days that you're trying to send them money. They'll get the money you sent within one business day of registering for *Zelle*. If your contact doesn't register within 14 days, we'll return the money to your account.

Payment Details

Confirmation Number	4050681625
Amount	\$2,080.00
From	Brandon Checking - [REDACTED]
To	Kyle Hadley [REDACTED]
Message	Immediate Rejection and Return of Unsolicited Payment for 6122 N Winthrop Ave Unit C, Case Nos. 20251707919 and 2025CH05527

Thank you for using Ally Bank and *Zelle*.

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Ally Bank Customer Care Department, P.O. Box 951, Horsham, PA 19044.

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