

# HOW A LEGAL ACTION IS INSTITUTED

## *What is a summons and what happens once it is issued?*

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WHEN a party intends to start legal action, he or she issues a summons on which the claim is stated.

In the case of a lease contract, it is a document a landlord/ landlady or tenant or their representatives issues, but the court rules empower a sheriff to serve it.

Examples of a landlord/lady causing summons to be served may relate to the tenant's failure to vacate after an eviction notice was issued, or for failure to pay rental due.

It is first presented to the Clerk of the Court, who stamps it and files a copy in the (landlord's) file in court.

There are two types of summons the landlord or landlady could serve on the tenant:-

1. *Ordinary*
2. *Rent Interdict*

### **What should the tenant do on receiving a summons?**

- ❑ Enter "an appearance to defend". If the tenant does not know how to do this, immediately consult an attorney, nearest community organisation or approach the Legal Aid Board.
- ❑ If the tenant does not respond to a summons immediately, default judgment can be taken against him or her followed by an ejection order.

- ❑ A tenant must ensure that he or she has a proper defence, i.e. a reason why the court should not give judgment in favour of the landlord/ landlady.

If the tenant does not have a good defence, he or she may lose the case and will have to pay the landlord/ lady's legal costs as well.

Examples of a good defence:

- (a) Where the tenant has in fact paid the rent, but the landlord or landlady is suing for arrears;
- (b) Where the tenant has a claim against the landlord/ landlady for some other reason and the money the landlord owes him or her, cancels out the money owed to the landlord;
- (c) Where the landlord/ lady has failed to effect a repair to the dwelling which he or she is obliged to undertake, and the tenant carries out the relevant repair and recovers the cost from the landlord by withholding the rent, provided the tenant followed the accepted procedure of "Repair and Deduct".

### **Request Further Particulars**

A tenant (defendant) who is challenging the legal action, after entering an appearance to defend, may request further particulars from the landlord/ landlady (applicant).

The court has a guideline or format that must be followed when such a request is made from the defendant, and it is advisable to have a lawyer.

In fact, the lawyer would decide whether it is necessary to file a “Request Further Particulars”.

### **Summary Judgment**

After the tenant enters an appearance to defend, the landlord/lady may inform the court that the tenant has no grounds to defend the summons and is merely playing “for time”.

The court is asked to grant judgment immediately.

However, the tenant may oppose the “Summary Judgment” within a specified period (e.g. days) by filing an opposing affidavit with the landlord’s attorney and the court.

Various other legal procedures follow after summons is served and after a tenant enters an appearance to defend. It is therefore necessary to seek legal advice immediately.

### **What happens if summons is issued after a complaint is lodged with the Rental Housing Tribunal?**

If the tenant’s complaint relates to the landlord’s failure to carry out repairs and the tenant is not in rental arrears or has not breached the lease, he can inform the magistrate’s court that the complaint in respect of an unfair practice is unresolved. In the opposing affidavit, the tenant-under oath-will provide the date the complaint was lodged with the RHT and concise information about the nature of the complaint.

The tenant must request the court to refer the matter to the RHT or delay the proceedings until the RHT has finalised the dispute. It is advisable to consult an attorney.

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