

Arrears: are they legitimate?

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A STATEMENT reflecting a balance regarding arrear rentals can be annoying to a tenant who is regular with full rental payment.

The so-called arrears accumulate and compounded with interests in subsequent statements. Sometimes the rent collecting agent or landlord threatens to terminate the lease or list the tenant with the credit bureau.

When a tenant receives a notice of a rental increase but opts to pay the existing rental in the absence of a clause that allows for an increase, the difference is often considered “arrears”. In terms of a contract, an acceptance to an offer must be unequivocal.

The tenant who decides to pay the existing (old) rental clearly rejects the offer of a new (increase) rental. There is therefore no arrear and any interest charged on the alleged arrear is unlawful and unenforceable.

Similarly, any attempt to cancel a lease because the tenant continues to tender the existing rental, will fail. However, if there is a clause in a written agreement that stipulates an increase or contains an automatic annual increase, the tenant’s rejection would result in a breach of contract.

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