

Dealing with the payment of rental

Unless agreed to, there is no grace period

Daily News Tuesday July 24 2007

THE payment of rental on time is an important part of the rental agreement.

1. It must be paid at the time and place agreed to, and in the manner requested (cash, cheque, money order, etc).
2. Failure to pay, continuous late payment of rent or the tenant withholding payment, is a violation of the rental agreement. Such actions give the landlord the right to cancel the lease.
3. If the dwelling is let without an agreement to rental, then no contract of lease exists.
4. The landlord can lodge a complaint with the Rental Housing Tribunal of unfair practice when rental is not paid. The tenant is under duty to pay rental regularly, on time and in full [s 4 (5) (a)].

When is Rental Paid?

1. In a written lease, the rental is payable on the date stated in the lease.
2. In a verbal lease, it is payable on the date agreed by the landlord and tenant. Rent is either paid in *Arrears* or in *Advance*.

ARREARS: If it is paid at the end of the period of occupation, it is paid in arrears, e.g. in the case of a weekly tenancy, rental is paid on or before the end of the week; in the case of a monthly tenancy, rental is paid on or before the end of the month.

ADVANCE: If it is paid at the beginning of the period of occupation then it is paid in advance. Most tenancies are based on advance payment of rental.

Some tenants confuse the rental paid in advance when the lease contract comes to an end.

It is believed that rental is not payable for the last month (or week) of the lease period because of the “advance rental”.

This misunderstanding or confusion can lead to legal action against the tenant for arrear rental.

What Rules apply when there is no agreement about the date rentals are payable?

(a) If the rental is payable in advance, e.g. in the case of a monthly lease, the rental is paid on or before the 7th day of the month in terms of common law.

(b) If the rental is payable in arrears, then it must be paid on or before the date agreed or on or before the last day of the month or week or day or year. If such a first day of the month falls on a Sunday, to pay the rental after Sunday would be a breach of the lease.

(c) In the case of a rent controlled dwelling, it was payable by no later than the 7th day of the month.

It must be understood that there is no period of grace unless such a period is agreed upon by the landlord and the tenant, either specifically or by implication.

Sayed Iqbal Mohamed, Chairperson, Organisation of Civic Rights; Member of the KwaZulu Natal Rental Housing Tribunal www.ocr.org.za
From: Tenant and Landlord in South Africa A guide to the rights, duties and obligations of tenant and landlord in South Africa. Sayed-Iqbal Mohamed (2004). Organisation of Civic Rights, Durban