

# Handling a tenant in breach

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A LEASE contract between tenant and landlord stipulates that rental is payable on the 1<sup>st</sup> day of the month. It also contains a clause for a two months notice period to terminate and a clause for cancellation for breach.

When the tenant falls into arrears the landlord must place the tenant on terms, informing the tenant that she is in arrears and is therefore in breach and must remedy the breach.

Should the tenant fail to respond, the two calendar months notice does not *apply* and the landlord can proceed with cancellation requiring the tenant to vacate the dwelling.

Should the tenant ignore the cancellation, the landlord may proceed with eviction through the courts and can also sue for the arrears on the summons.

All the written correspondence can be used in support of the action brought against the defaulting tenant.

Section 4(5) (c) of the Rental Housing Act 50 of 1999 (RHA) states the landlord can “terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease.”

The tenant failing to pay the rental and having ignored the opportunity to remedy the breach cannot use the “unfair practice” provision of the RHA.

Can a landlord recover arrears after his tenant moved out of the dwelling?

The landlord can lodge a complaint with the provincial Rental Housing Tribunal for the arrears with interest, if this was not specified in the particulars of claim to the summons for eviction.

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