

Rent: Clarifying due dates and the little matter of that deposit

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Sometimes both tenant and landlord are not clear about the difference between the deposit and advance rent. The confusion usually arises at the end of the lease period.

A tenant may claim that rental is not payable for the last month because of the "advance" rental paid at the commencement of the lease. By interrogating the circumstance of the agreement, it becomes apparent that a tenant paid a security deposit and paid rental before or at the time of taking occupation.

The agreement was that rental must be paid at the beginning of each month or, in the case of a yearly, weekly or daily tenancy, at the beginning of each year, week or day respectively.

When is rental paid? This depends whether parties entered into a written lease contract or concluded a verbal (oral) one. In a written lease, parties agree to the date rental is payable. The rental is therefore payable on the date stated in the lease.

In a verbal lease, it is payable on the date agreed by the landlord and tenant, either in *advance* or in *arrears*. If it is paid at the *beginning* of the period of occupation, then it is paid in *advance*. If it is paid at the *end* of each period of occupation, it is paid in *arrears*.

An example of rental paid in arrears: in the case of 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.

There are instances when parties do not have an agreement about the actual date rental is payable on. The following rule would then apply: -

(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 seventh 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 (year, week or day). And 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.

The payment of rental on time is an important part of the rental agreement. It must be paid at the time and place agreed upon, and in the manner requested (cash, cheque, money order, etc).

Failure to pay, continuous late payment or the tenant withholding payment, is a violation of the rental agreement. Such actions give the landlord the right to cancel the lease.

If the dwelling is let without a rental agreement, then no contract of lease exists.