

Responding to legal action after a rent dispute

Sayed Iqbal Mohamed

WHAT IS A SUMMONS?

A DOCUMENT, which can be served by the landlord, either by himself or herself or through an agent, lawyer or sheriff.

A summons is issued after an eviction notice 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 could serve on a 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. If the tenant does not have a good defence he or she may lose the case and will have to pay the landlord's legal costs as well.

Examples of good defences are: -

- a. Where the tenant has in fact paid the rent but the landlord is suing for arrears;
- b. Where the tenant has a claim against the landlord 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 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 procedure of "Repair and Deduct".

SUMMARY JUDGEMENT

After the tenant enters an appearance to defend, the landlord 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. 14 days] by filing an opposing affidavit with the landlord's attorney and the court. There are various other legal procedures that follow after summons is served, after the tenant enters an appearance to defend. It is therefore necessary to seek legal advice immediately.