

Breach of lease and remedies

Late payment violates the deal

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THE TENANT of a residential lease is under duty to pay rental regularly, on time and in full as required by section 4(5) (a) of the Rental Housing Act 50 of 1999 as amended (RHA). Tenants of commercial leases are also bound by a similar common law rule confirmed in the act.

Failure to pay rent on time or breach of the lease conditions entitles the cancellation of lease, or refusal to renew it.

Payment of rent

- (i) The payment of rental on time is an important part of the rental agreement¹. It must be paid at the time and place agreed to, and in the manner requested (cash, cheque, money order, etc).
- (ii) 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 or landlady the right to cancel the lease.
- (iii) If the dwelling is let without an agreement to rental, then no contract of lease exists.
- (iv) The landlord / landlady can lodge a complaint

with the RHT of unfair practice when rent is not paid.

When is rent paid?

Rent is either paid in *arrears* or in *advance*. In a written lease, the rental is payable on the date stated in the lease. In an oral lease, it is payable on the date agreed by the landlord and tenant.

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, rent 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 rent.

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?

¹ *Myerson v Osmond Ltd* 1949 (2) SA 583 (N).

- (a) If the rent is payable in advance, e.g., in the case of a monthly lease, the rent is paid on or before the 7th day of the month in terms of common law.
- (b) If the rent 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 rent after Sunday would be a breach of the lease.

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 explicitly or by implication.

Late payment of rental and landlord's remedy

If a written lease does not have a clause dealing with the late payment of rent, or in the case of an oral lease, the position on the late payment of rent is that the tenant is in breach of the terms of the lease, the landlord may choose to declare the lease cancelled or to enforce the payment of the rent, or do both.

The landlord's remedy would be to issue summons to recover the arrear rental or cancel the lease or start eviction proceedings.

The landlord can recover outstanding rental through the RHT or through the courts.

The landlord can also use the hypothec (which is to be discussed in detail in later articles in this series).

Refusal to renew lease

The tenant, O K Bazaars (the case is referred to as, O K Bazaars (1929) Ltd v Cash-In CC 1994 (2) SA 347 (A)) appealed against the decision of the Cape Provincial Division in Cash-In CC v O K Bazaars (1929) Ltd 1991 (3) SA 353 (C).

In the Cape Provincial Division the court held that the tenant was not entitled to renew the lease for a further 9 years and 11 months for having failed to fulfil all the conditions of lease.

On appeal, the Supreme Court of Appeal (Appellate Division) confirmed the judgment that O K Bazaars failed to fulfil the terms and conditions of the lease by not delivering timeously to the landlord Cash-In CC an auditor's certificate of its turnover for calculation of additional auditor's certificate of its turnover for calculation of additional rent.

The tenant was therefore not allowed to renew the lease.

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