

# When is your rent due?

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Tenants have a particular responsibility when it comes to the payment of their rent, and failure to do so can be regarded as a breach of contract. Here are the myths and truths surrounding the correct procedure of paying your rent.



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## Time for payment

This is stipulated in your lease. If you are doing an EFT, the money must reach the landlord's bank account by the appointed date. You are still in breach of your lease if you have instructed that payment be made, but the payment has not reached the landlord's account by the appointed date, or if you have made the transfer from one bank but the payment has not yet reached the landlord's account by the appointed date because he banks with another bank.

## Place for payment

You need to make payment to the landlord's nominated account. Making payment into any other account or to any other person (for example, paying a plumber to do something that you wanted the landlord to do for you, or paying into the municipality's account) does not count as payment to the landlord. Payment to a body corporate instead of the landlord, or to a hijacker or a "tenants' committee" does not count as payment to the landlord.

## Manner of payment

If you make payment in any manner other than those permitted by the lease (for example, if you are required to pay into the landlord's bank account but you deposit cash into his account instead), you are breaching the lease. If you deposit cash directly into the landlord's account, or you give the landlord cash, then you will likely be held liable for the cash deposit fees.

## Penalties for late payment

The landlord is not legally entitled to charge you any amount as a penalty, other than interest, for late payment. However,

there are a number of other courses of action that the landlord might take if you pay late...

## **Breach of lease**

If you have not paid your rent on time, you are in breach of your lease. This happens automatically and immediately without the landlord needing to send you any notice to tell you that you are in breach.

There are rumours floating around that a tenant is automatically given seven days to pay after the due date for payment – this is incorrect. You are in breach immediately after the due date for payment has arrived, if you have not paid by that time. In certain instances, a landlord can immediately take legal action against you in the following ways:

### **1. Suing you**

Your lease might say that your landlord needs to give you notice of your breach and time to remedy your breach (ie pay your outstanding rent) before suing you. But your lease also might not require that your landlord give you notice before suing you. It is legal for your landlord to immediately sue you without giving you notice of your breach, if this is provided for in the lease.

The landlord will usually engage an attorney to issue summons against you, in which case you will be held liable for the taxed legal costs. Once an order is granted against you, if you have still not paid the outstanding rental, the landlord can obtain a warrant of execution and instruct the sheriff to come to your house and to take your goods into his possession to sell at public auction to satisfy the debt owing to the landlord.

### **2. Attaching your goods**

A landlord has a right to attach the goods of the tenant (which are on the rented property) and to have the sheriff sell those goods at public auction, and to apply the proceeds of the sale to the outstanding rental.

In order to enforce this right, the landlord engages an attorney to issue a rent interdict summons. This is just a slightly different form of summons from the one referred to above. The court issues this document and then the sheriff goes to your house and writes up a list of your movable belongings. Once they are written up, they have been “attached” by the court and may not be removed from the property.

When the court makes an order on the summons, to the effect that the tenant owes the landlord money, the court also makes an order that the goods that have been attached be sold to pay the landlord the outstanding rental. At this stage the sheriff comes to take the attached goods into his custody and store them until the public auction is held. It is unlawful for a landlord to simply remove or take a tenant’s goods, without an attachment order having been granted by the court.

### **3. Cancellation**

Regardless of whether your lease is residential or commercial, in the majority of cases your landlord will need to give you notice of 20 business days to rectify your breach (ie to make payment of your outstanding rental). If you don't make payment in this time, the landlord can cancel your lease and evict you immediately after the 20 business days. This applies whether you have a written lease or a verbal lease, and regardless of whether your initial written residential lease expired and is now being renewed on a monthly basis in terms of the Rental Housing Act 50 of 1999.

#### **4. Eviction**

A landlord should never evict a tenant without an order of court. The eviction of a tenant without an order of court is unlawful.

However, a landlord can apply to a court for an eviction order immediately after the lease has been cancelled. The landlord is not legally obliged to give the tenant any additional time to get his affairs in order or find alternative accommodation.

If the landlord has to go to court to get an eviction order, and if the landlord has to instruct the sheriff to carry out that eviction order because the tenant has not voluntarily vacated by the date appointed by the court, the tenant will be held liable for the legal costs.

#### **5. Listing on ITC**

Many landlords threaten to list their tenants on ITC (or with another credit bureau) if the outstanding rental is not paid.

## **ABOUT THE AUTHOR**

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