

Financial orders against tenants

If your landlord has taken you to the Victorian Civil and Administrative Tribunal and you have been ordered to pay them a sum of money, the following information may be useful.

Before making any decisions about payment, it is a good idea to see a financial counsellor who will be able to help you work out how much, if any, you can afford to pay. For a referral to a financial counsellor in your area phone the Financial and Consumer Rights Council on ☎ (03) 9663 2000.

When you are paying

If you can afford to pay the landlord the full amount, make sure you get a receipt and keep it for your records.

If you can't afford to pay the amount in full but want to pay it off in smaller, regular amounts, you can try reaching an agreement with your landlord. You should put your offer in writing, telling the landlord how much you can afford to pay and when and how the payments will be made. Make sure the offer is one you can afford so you don't miss any payments. If the landlord agrees to accept payment by instalments, get this agreement in writing.

If the landlord refuses your offer to pay by instalments, you can still try making part-payments although the landlord may refuse to accept them.

➔ Whether you pay in full, by instalments or by part-payments, make sure you get receipts for all payments and keep the receipts in a safe place.

Instalment Order

If your landlord agrees to an arrangement for payment by instalments, you can formalise the agreement by applying to the local Magistrates' Court for an Instalment Order. This is useful as it stops the landlord from taking any further action against you, as long as you stick to the terms of the order.

If the landlord doesn't agree to accept payment by instalments, you can still apply for an Instalment Order. You can also apply at a later date to vary the amount of the payments if your circumstances change.

However, the court will not make an order if the Registrar believes that you can't afford the proposed repayments or thinks you can afford to pay the amount in full.

➔ Interest is payable on the outstanding amount so by paying by instalments, you end up paying more than you would if you paid the full amount in one sum.

For assistance with this process, contact the Registrar of your local Magistrates' Court (phone the Justice Department listed in the *Business & Government White Pages* telephone directory). When you go to Court you will need to take a copy of the Tribunal order and details of your assets, income and expenses. The Registrar will help you fill out an Application for Instalment Order and a Statement of Affairs, which details your financial circumstances.

The Registrar may make an order immediately, or they may arrange for a hearing. If a hearing is arranged, you will be notified by mail of the time and place.

When you are not paying

➔ Consumer Affairs Victoria can prosecute for failure to comply with a Tribunal order, and this applies to both monetary and non-monetary orders. The maximum penalty is \$1000, plus \$200 a day until the order is complied with, up to \$2000.

If you can't afford to pay the debt or you decide not to pay, the landlord can take the following steps.

Oral Examination

You can be issued with a summons to attend the Magistrates' Court with your relevant financial documents. You will be questioned under oath about your financial situation. It is usually the Registrar who conducts the questioning. This process is used to obtain information about your financial position so the landlord can decide the best way, if any, to enforce payment of the debt.

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Instalment Order

The landlord can also apply for an Instalment Order from the Magistrates' Court if you refuse to pay the debt. However, the court will not make the order if your only source of income is a pension or benefit.

Warrant to Seize Property

A Warrant to Seize Property allows the Sheriff to come to your home and take goods that can be sold to pay off the debt. You don't have to let the Sheriff in and it is illegal for them to force entry into your home. However this doesn't apply to outdoor structures such as garages or sheds, which means the Sheriff can seize goods—including cars—from these places without your consent. They may also enter your premises through any open door or window.

➡ It is an offence to assault the Sheriff or to take back any goods seized under the warrant.

If the Sheriff does gain lawful access to your home, they can then seize goods. This is usually done by putting a red sticker on the items they intend to sell if you don't repay the debt. The Sheriff leaves a notice listing the items that have been 'seized' and informing you that you are not allowed to dispose of these goods without the written permission of the Sheriff.

The Sheriff cannot seize:

- > jointly owned goods
- > goods belonging to someone else
- > goods on loan or hire purchase
- > necessary clothes or household items (eg tables, chairs, beds, fridge, television)
- > motor cars less than the value of \$6000
- > ordinary tools of trade, work equipment, professional instruments and reference books to the value of \$3050

If any of the seized goods fall into these categories you should tell the Sheriff at the time and if necessary, write to the Sheriff stating which goods should not have been seized and why. Send a copy of this letter to the Registrar of the Magistrates' Court where the warrant was issued. If the goods belong to someone else, the owner of the goods should do the same. If the Sheriff does not withdraw the seizure, a court hearing will be arranged to settle the matter.

You will usually be given some time to make a payment to the Sheriff before they come back and take the seized goods for public auction. The Sheriff is allowed to forcibly re-enter your home to take the goods away for sale if they were previously allowed entry to seize the goods.

Attachment of Earnings

If you are employed, the landlord can apply for a Magistrates' Court order that your employer deduct an amount from your wages each pay period until the debt is paid off. You will receive an Attachment of Earnings summons along with the time, date and place of the hearing and a Judgement Debtors Statement of Financial Position form. You should talk to a financial counsellor before filling in this form (see the number at the start of this fact sheet).

You should attend the court hearing with evidence of your income (eg wage slips) and expenses (eg rent receipts, bills) as well as your completed Statement of Financial Position. Before the hearing, work out the total weekly repayments you can afford, if any, and have a written record of your income and all expenses. If you change your job, the landlord will have to repeat the whole procedure for an order against your new employer.

➡ The landlord can add the costs of enforcing the debt through these methods (as well as interest) to the total amount that you owe.

For more information phone the Tenants Union Advice Line on ☎ (03) 9416 2577.