

Avoiding eviction for rent arrears

Under most tenancy agreements, rent is paid in advance. The most common arrangement is for the rent to be paid in advance on the same day of each month to cover the month ahead.

If you do not pay rent on the day that it is due, for each day that you occupy the property without having paid rent you will be one day overdue or in 'rent arrears'.

Ways to avoid getting into rent arrears

If you are on a low income or a pension or benefit, it can be easier to pay your rent on time if you pay in fortnightly instalments whenever you receive your income. However, many tenancy agreements require that the rent be paid monthly. If you want to pay your rent every two weeks instead of monthly, you should try to get approval from the landlord or real estate agent.

If you receive a pension or benefit you may be able to have your rent deducted and paid directly using Centrepay, which is administered by Centrelink. For more information about Centrepay you should contact Centrelink or read the information at www.centrelink.gov.au/internet/internet.nsf/services/centrepay.htm

➔ If you have your rent paid by Centrepay then it is up to you to cancel the payments when you move out. You also need to make sure that you adjust the amount of the final rent payment if you are moving out before the next payment is due. (See the **When you want to leave** fact sheet for more information.)

Rent receipts should include the period for which the rent is paid. This should tell you what date the rent is paid up to. You should ask for a rent receipt whenever you pay your rent. If you are not sure when your rent is paid up to you should contact the landlord or real estate agent and ask for a copy of your rent payment record.

What to do if you get into rent arrears

If you are 14 days in arrears, your landlord can give you a 14-day Notice to Vacate. The 14 days could be consecutive days, or even if your rent is sometimes only a day or so late the 14 days could have accrued over time.

➔ You can only be given a notice for rent that is overdue. You cannot be given a Notice to Vacate for not paying your rent in advance. If you are not 14 days in rent arrears at the time that you receive the Notice to Vacate then the notice is invalid.

If you get into rent arrears and you are unable to make a payment, contact your landlord or real estate agent as soon as possible and tell them when you will be paying.

If you cannot pay the arrears in one payment, you should offer to pay them off over time (eg an extra \$20 per week). Don't offer to pay more than you can afford. Make the offer in writing and keep a copy—even if the landlord or agent doesn't accept your offer, you can use your letter as evidence that you tried to resolve the problem.

➔ It is illegal for your landlord or agent to personally attempt to evict you. Only the police can evict you and even then, they must have a valid Possession Order and a Warrant of Possession from the Victorian Civil and Administrative Tribunal. (See the **Eviction** and **Complaints about landlords and real estate agents** fact sheets for more information.)

If you need help to make a payment plan you can talk to a financial counsellor by calling Money Help on ☎ 1800 149 689 or Financial Counselling Australia on ☎ 1800 007 007.

There are also housing services that may be able to give you financial assistance if you are in rent arrears. You can find these services on ☎ 1800 825 955 (24 hours toll free) or contact the Tenants Union and we can help you find your local housing service.

continued overleaf...

The eviction procedure for rent arrears

If the landlord or agent reject your offer or you are unable to make any payments, the landlord must follow the proper legal procedure if they want to evict you.

You can only be evicted if there has been a hearing at the Victorian Civil and Administrative Tribunal, the Tribunal has granted the landlord a Possession Order, the landlord has purchased a Warrant of Possession and the Police come to execute that warrant.

See the Eviction fact sheet or contact the Tenants Union for information about the procedure the landlord must follow if they want to evict you.

If you receive a Notice of Hearing from the Victorian Civil and Administrative Tribunal, and you do not want to be evicted, you must attend the Tribunal hearing.

➡ If your landlord or agent tells you that you do not need to go to the hearing because you have paid off the arrears (or for any other reason), you should contact the Tribunal on ☎ 9628 9800 to check that the application has been withdrawn. If it hasn't been withdrawn you should go the hearing if you do not want to be evicted.

At the Tribunal hearing, the Tribunal Member can make a Possession Order or they can decide to either dismiss or adjourn the landlord's application for a Possession Order. The Member may adjourn the application if:

- > you can show that a repayment plan has been agreed upon; or
- > you can show the Tribunal how you can pay off the arrears; and
- > the landlord will not suffer any financial loss as a result

Many tenants are successful at asking the Tribunal not to grant a Possession Order if they have a reasonable plan to pay back the rent arrears.

You should take as much evidence as you can to the Tribunal hearing to show how you got into rent arrears and that you can pay the arrears. Evidence should include a statement from a financial counsellor that outlines your income and expenditure or some kind of similar documentation. You can also ask anyone who can support your case to give evidence at the hearing.

If the Tribunal adjourns the application it will be for a set period of time, usually 3 months. In this case, 'adjourn' means that the eviction is put on hold and you are given a second chance. If you repay the arrears according to the Tribunal order, on the set date/s the Tribunal will consider the application to be withdrawn and the matter will be closed.

However if you do not abide by the VCAT order (eg you are late in making a payment), your landlord can 'renew' the application and you will receive a Notice of Hearing. If this happens, you must go to the second hearing and give a good reason for not abiding by the order, or there is a chance that you will be evicted.

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