

Managing Rent Arrears - The Right Way!

presented by **ShaunLuyt**
Your Partner in the "Business" of Residential Property Rentals



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Overview

- The Agent's Responsibility under the Rental Mandate
- When can/should you start the Arrears Management process?
- The Arrears Management Process
- Letters of Demand
- The Importance of Due Process
- Cancelling the Lease

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The Agent's Responsibility under the Rental Mandate

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The Agent's Responsibility under the Rental Mandate

6. MANAGEMENT RIGHTS AND DUTIES (See item 1.12.2)

- 6.1. The Agent is tasked with administering and managing the Lease Agreement, as well as the Premises. In doing so, the Agents has the rights and duties set out in the Addendum, in addition to being responsible for the following:
- 6.1.1. Ensuring that all suspensive and resolutive conditions set out in the Lease Agreement have been fulfilled and that the Deposit is received immediately from the Tenant and is transferred to the Agent's Trust Account; provided that this clause 6.1.1 will only apply if the Agent has also entered into a Procurement Mandate. If the Agent has only entered into a Management Mandate, the provisions of clause 2.1.3 of the Addendum will apply;
 - 6.1.2. Collecting payments of all amounts due and owing to the Landlord in terms of the Lease Agreement and keeping a complete, correct and up-to-date record of such payments;
 - 6.1.3. Attending timeously, and with due diligence, to all queries and complaints by the Tenant and informing the Landlord of any queries or complaints that requires his intervention;
 - 6.1.4. **Attending to all defaults and breaches of the Lease Agreement and informing the Landlord promptly of these defaults and breaches; and**
 - 6.1.5. Inspecting the Premises as per the Lease Agreement.

Source: TPN Natural Person Mandate (Version 5.5)

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Mandate Suggestion

- Your arrears procedure should be included in your mandate (maybe an appendix)
- Explained & discussed during the Landlord onboarding process
- Agreed to by the Landlord when entering into the mandate

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When Can You Take Action?

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When Can You Take Action?

- Grace Period?
 - Tenants have a 7 day grace period to pay rent
 - You can't take any action until the 7th

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When Can You Take Action?

- Dispute
- Tenants have a 7 day grace period to pay rent
- You can't take any action until the 7th

FAKE NEWS

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When Can You Take Action?

- Dispute
- Tenants have a 7 day grace period to pay rent
- You can't take any action until the 7th

FAKE NEWS

You can start implementing your Arrears Management Procedure as soon as the Tenant is in arrears

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When is the Tenant in Arrears?

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When is the Tenant in Arrears?

- When they haven't fulfilled their obligations under the lease, i.e.
 - Haven't paid **ALL AMOUNTS DUE & PAYABLE**
 - **IN FULL**, and
 - **ON TIME**

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What does your Lease Agreement say?

10.3. The Tenant must:

- 10.3.1. ensure that the Rental clears the Landlord's nominated bank account by the 1st (First) day of every Month;
- 10.3.2. confirm with the Landlord / Agent that payment has been received; and
- 10.3.3. repay the Landlord / Agent for any bank charges resulting from any payment made by the Tenant to the Landlord / Agent.

Source: TPN Natural Person Lease (Version 6.3)

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When is the Tenant in Arrears?

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Finalise 1 st Payments	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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When is the Tenant in Arrears?

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Paid in FULL?	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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When is the Tenant in Arrears?

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 In ARREARS!	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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When is the Tenant in Arrears?

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Can Start Action	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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What about 'Other Amounts'?

- e.g. utilities
- Have a clear policy
 - Synchronise all due dates to the 1st (if possible)
 - Process arrears twice a month?

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Arrears Management Process

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LEGAL Arrears Management Process

- Arrears = Tenant in Breach of Lease

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What does the Lease say?

23. BREACH OF THIS LEASE AGREEMENT BY THE TENANT

- 23.1 In the event of the Tenant not paying the Rental or any other monies due in terms of this Lease Agreement on the date upon which such monies are due and payable, or committing any other breach in terms of this Lease Agreement then:
- 23.1.1 should the provisions of Section 14 of the CPA apply to this Lease Agreement and the Tenant remain in breach of any of the terms of this Lease Agreement for a period of 20 (Twenty) Business Days after despatch of a Written notice calling upon the Tenant to remedy such breach; or
- 23.1.2 should the Lease Agreement continue on a Month-to-Month basis in accordance with the provisions of clause 6.1, and the provisions of Section 14 of the CPA accordingly not apply to this Lease Agreement, and the Tenant remain in breach of any of the terms of this Lease Agreement for a period of 7 (Seven) calendar days after dispatch of a Written notice calling upon the Tenant to remedy such breach; then the Landlord shall be entitled, in his sole discretion and without prejudice to any other rights that he may have in law, to either claim specific performance in terms of this Lease Agreement, or to cancel this Lease Agreement forthwith and without further notice claim all arrear Rental and / or any other damages from the Tenant.

Source: TPN Natural Person Lease (Version 6.3)

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LEGAL Arrears Management Process

- Step #1:
Issue Notice of Breach
- Step #2:
Cancel Lease
FORTHWITH
and / or Recover Rent Arrears
(no further notice needed)

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LEGAL Arrears Management Process

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LEGAL & PRACTICAL Arrears Management Process

- Add in an additional step
 - **Courtesy Tenant Reminder**

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LEGAL Arrears Management Process

- **Step #1:**
Issue Notice of Breach
- **Step #2:**
Cancel Lease
FORTHWITH
and / or Recover Rent Arrears
(no further notice needed)

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LEGAL & PRACTICAL Arrears Management Process

- **Step #1:**
Courtesy Tenant Reminder
- **Step #2:**
Issue Notice of Breach
- **Step #3:**
Cancel Lease
FORTHWITH
and / or Recover Rent Arrears
(no further notice needed)

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LEGAL & PRACTICAL Arrears Management Process

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Can Start Action	3	4	5	6	7
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LEGAL & PRACTICAL Arrears Management Process

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Reminder	3 Start Action	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
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29	30					

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Step #1 – Tenant Reminder

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STEP #1: Tenant Reminder



OUTSTANDING BALANCE REMINDER (T003)

[Salutation],

FRIENDLY REMINDER TO SETTLE THE OUTSTANDING BALANCE ON YOUR ACCOUNT

This is a friendly reminder that, according to our records, your account has not been paid in full. Please refer to the attached statement.

This email is sent as a courtesy - if this was an oversight, or an error, please pay the outstanding balance immediately in order to avoid any late charges and / or further action.

If you have paid, please send proof of payment urgently by reply email so that we can look into the matter and correct any error.

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STEP #1: Tenant Reminder

Feel free to contact [insert name & contact details], or reply to this email, with any questions or concerns.

Thank you in advance for your prompt attention in this matter.

[YOUR NAME]
[Your Title]
m [Your Mobile Number]
[Your Email Address]

PS. Our company payment and arrears management policy can be viewed at [insert URL]

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Publish Your Arrears Procedure Publicly

Tenant Arrears Procedure Online Example

- <https://maynard.harcourts.co.za/Home/Tenants/Rent-Other-Arrears>

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IMPORTANT: Update Landlord



TENANT REMINDER SENT (L003)

[Salutation],

YOUR TENANT/S HAVE BEEN SENT A PAYMENT REMINDER

Just a short email to let you know that we are aware that your tenant's account has not been fully settled. A copy of your tenant's statement is attached FYI.

We have sent reminders today and requested that the account be settled in full immediately.

You will be notified of any payment/s received.

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IMPORTANT: Update Landlord

If payment is not received in the next business day, we will proceed with the next step of our arrears management procedure, as required per our mandate with you.

We will keep you posted on this matter, but if you have any queries at all, please feel free to contact [INSERT CONTACT DETAILS].

[YOUR NAME]
[Your Title]
m [Your Mobile Number]
[Your Email Address]

PS. Our company payment and arrears management policy can be viewed at [insert URL]

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Publish Your Arrears Procedure Publicly

Landlord Arrears Procedure Online Example

- <https://maynard.harcourts.co.za/Home/Landlords/Rent-Arrears-Policy-Procedure>

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Arrears Management Process

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Reminder	3 Check Payments	4 Check Payments	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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Step #2 – Notice of Breach

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LEGAL & PRACTICAL Arrears Management Process

- Step #1:
Courtesy Tenant Reminder
- Step #2:
Issue Notice of Breach
- Step #3:
Cancel Lease
FORTHWITH
and / or Recover Rent Arrears
(no further notice needed)

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LEGAL & PRACTICAL Arrears Management Process

- Step #1:
Courtesy Tenant Reminder
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LEGAL & PRACTICAL Arrears Management Process

- Step #1:
Courtesy Tenant Reminder
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Arrears Management: Step #2

- Issue Tenant a Notice of Breach
 - Details of the Breach
 - How to Rectify the Breach
 - By when to remedy the breach
 - Consequences of NOT rectifying the breach

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Arrears Management: Step #2

- Issue Tenant a Notice of Breach
 - Details of the Breach
 - How to Rectify the Breach
 - By when to remedy the breach
 - Consequences of NOT rectifying the breach

LETTER OF DEMAND (LOD)

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Arrears Management Process

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Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Reminder	3 Check Payments	4 Check Payments	5	6	7
8	9	10	11	12	13	14
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29	30					

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Arrears Management Process

June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1 Rent Due	2 Reminder	3	4 LOD	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

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Letters of Demand

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Letters of Demand

- Two Types
 - The only difference is the timeframe to rectify
- Reason = Consumer Protection Act (CPA)
- If the CPA applies:
 - MUST give the tenant (consumer) 20 business days to rectify their breach
- If CPA doesn't apply:
 - Do not have to give the 20 business days
 - Default timeframe = 7 days
 - Unless specified otherwise in your lease T's & C's

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CPA & Letters of Demand

- CPA only applies to:
 - Fixed term agreements / leases
 - and the following categories of consumers:
 - Natural Persons
 - Juristic Entities with annual turnover / asset value < R2 million
- Section 14 of the CPA deals with breach of a fixed term agreement under the CPA
 - Does not apply to agreement between Juristic entities – irrespective of the turnover / asset value

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CPA & Letters of Demand

- Section 14 of the CPA deals with breach of a fixed term agreement under the CPA
 - (ii) the supplier may cancel the agreement 20 business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time;
- S14 does not apply to agreement between Juristic entities – irrespective of the turnover / asset value

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Flow Diagram / Decision Tree

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Keeping the Landlord Updated

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LOD SENT (L005)

[Salutation],

RENT NOT YET PAID IN FULL – LETTER OF DEMAND SENT

Further to our previous communication regarding your tenant's breach of lease by not paying their rent in full on the due date for payment, please note the following:

Despite the reminder that was sent to the tenant/s, full payment has not yet been received, nor any proof of payment provided.

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Keeping the Landlord Updated

As per our company policy and arrears management procedure, and our mandated obligations to protect your interests, we have instructed our attorney to send a formal Letter of Demand (LOD) requesting full payment of the outstanding balance of the tenant/s account within [INSERT THE PERIOD HERE], as required under the [Consumer Protection Act / Lease Terms & Conditions].

We will liaise to follow up on this matter and will update you on any further progress in the regard.

Please note that if the outstanding amount is not paid in full by the deadline date of the LOD you will be entitled to cancel the lease agreement and / or take legal action to recover the amount owing, if need be.

We are hopeful that the Letter of Demand will elicit full payment from your Tenant/s and we will keep you update on any payments received.

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LOD's – Delivery

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Delivery of the LOD

- Registered Post
 - Have to add an additional 4 business days to the timeframe for delivery
 - Deemed to have been delivered after 4 business days
 - Whether they collect it or not
- Email
 - Make sure your lease agreement makes provision for it
- Hand Delivery
 - No proof

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LOD's – Satisfying the Demand

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How is the 'Demand' in the LOD Satisfied?

The **FULL** amount
 'demanded' in the LOD
 must be paid
 BEFORE the deadline

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How is the 'Demand' in the LOD Satisfied?

As soon as the requirements of the LOD are met,
the LOD is essentially 'cancelled'

i.e. no further action possible /
Landlord's recourses no longer available

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LOD's – Demand NOT Satisfied

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What happens if the LOD is not satisfied?

The Landlord has the following options:

- Cancel the lease & give the tenant notice to vacate the property and / or
- take legal steps to recover arrears
 - Only once the lease has ended & the tenant has vacated, and
 - If there is not sufficient deposit to cover the arrears (and damages, if any_

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Need the Landlord's Instructions to Cancel

- ONLY the Landlord can give permission to cancel
- The Agent cannot (usually) authorise lease cancellation
- Need to seek the Landlord's instructions
 - Advise the of the pro's & con's
 - As well as the consequences/implication of their decision

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Seek Landlord's Instructions to Cancel

- Always do this in writing
- Seek any instructions in writing too (CYA)

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Arrears Management Process

The Importance of Due Process

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The Importance of Following Due Process

- If you don't follow the correct procedure . . .
 - You may need to go 'back to start'

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Arrears Management Process

Cancelling the Lease

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Cancelling the Lease

- Crucial step . . .
- Needs to be done right
- If they don't vacate you will end up in an eviction process & you don't want to be sent back to start
- I always advise Landlords to get an attorney to draft and send the Letter of Cancellation (LOC)

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DocPack

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RentPack #10 – Arrears Management

- Policies & Procedures
 - RP001 - POLICY - Arrears Management Policy & Procedure
- Procedure
 - PC010 - CHECKLIST - Arrears Management
- Information Sheet/s
 - LI002 - LI INFO SHEET - Arrears Management Policy & Procedure
 - TI002 - TI INFO SHEET - Arrears Management Policy & Procedure
- Tenant Letter/s
 - T003 – Outstanding Balance Reminder
- Landlord Letters
 - L003 – Tenant Reminder Sent
 - L005 – LOD Sent

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