

# When a tenant does not pay - what do you do?

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## Introduction

If you are renting flats or commercial units, the most important thing beside a low vacancy ratio is that your tenants are paying the agreed rent on date.

The following text describes how to handle tenants that do not pay their rent. It is important to say that there does not exist a mandatory way of how to threaten a tenant who is behind in payment of the rent. The following described method is based on experience and is only a recommendation of how to threaten them.

## Time of payment of the rent

First at all you have to know when a tenant is behind in paying their rent. Tenants are automatically behind in payment after the date they have to mandatory pay the rent. In Germany the rent is usually payable on the third working day of each month, in advance of this month. If a tenant did not pay the rent until the third working day, they becomes behind in payment.

## Tools to get the outstanding payment

### Demand notes

An important tool to use to successfully receive the rent arrears from tenants is to send them a demand for payment note.

Demands for payment note has the advantage that the tenant is reminded that they did not pay their rent and they can see that there is somebody who cares that they did not pay their rent.

In most cases, tenants in arrears react to this demand for payment note by payment of the rent or a notice when they will pay the rent. The demand for payment note should be simple as possible for the recipient to clearly understand. It should contain the outstanding rents in an amount, the months, and the deadline when the tenant has to pay the outstanding amount.

It is common to take an extra fee for the demand for payment note, usually 5 € or 10 € per demand note. It should be a

compensation for your extra work and gives the tenants an incentive to pay their rent on time.

### **Agreement to pay the outstanding amount in instalments**

In some cases the tenants are not able to pay the outstanding payments in one amount. In this case you can offer the tenant to pay this outstanding amount in instalments. This solution is cheap for us because we will not need a lawyer, and it is good for the tenant because they will not have to move out the flat.

### **Cancellation of the tenancy without notice**

If the tenant is not willing to pay the outstanding payments you should cancel the tenancy. The tenant has the possibility to move from the flat and you can rent the flat to another person. The outstanding payments will still exist but the flat will bring you an income from the new tenant.

In Germany you can terminate a tenancy without notice if the tenant has not paid their rent for two months. The tenant then has the possibility to pay the rent within seven days. Then you have to rescind the cancellation. This option only exists for one time.

### **Action for eviction**

Due to the fact that in the few cases where the tenants refuse to move out from the flat after a cancellation, you usually have to engage a lawyer to make an action for eviction.

This action can even take one year from the beginning, and it is expensive; it can even cost 10.000 € It usually ends with an eviction by a bailiff.

The disadvantage of the action for eviction is that in a few cases you will get back the money from the outstanding tenant for the action for eviction as well for the outstanding rent.

There are two possibilities to make the action for eviction. The first is the “normal” action. After the legal issues the bailiff charges a forwarding agency to clear the flat from the stuff from the tenant and to store it. After three months the bailiff auctions this personal property. Unfortunately, in a few cases the belongings are not even valuable and can not even cover the costs of the auction.

The second possibility is called “Berliner Räumung”. In this case the bailiff clears the flat only of the tenant. The belongings will be left in the flat and the owner of the flat has a claim on the objects. The owner has to store the objects by themselves for two months and bring them to an auction held by the bailiff. This option is much cheaper.

## **Delinquency procedure**

Independent of the points above you have the option to make a delinquency procedure about the outstanding payments.

The first step is to plead a default summons, “Mahnbescheid” at the court. The default summons contains the outstanding payments and potential expenses to get them back. It is sent by the court to the tenant who has two weeks to reply or refuse. If they do not refuse, the owner has the possibility to go further and plead an enforcement order, “Vollstreckungsbescheid” at the court. This order is also sent to the tenant who has the option to answer or refuse. If they neither refuse nor reply to the enforcement order, the owner has the option of engaging the bailiff to go to the debtor and collect some objects that are to the value of the outstanding payments.

The delinquency procedure offers a cheap way to get the outstanding payments from the tenant because you do not have to engage a lawyer. Only when the tenant answers or refuses the default summons or the enforcement order, then you have to engage a lawyer.

The delinquency procedure is usually taken after the cancellation of the tenancy and parallel to the action for eviction.

## **Procedure in the case of outstanding payments**

Following is an example describing how the treatment of a tenant who does not pay the rent could proceed:

Date	Action
3rd May	Due date of payment of the rent
10th - 15th May	Analyse of outstanding payments and dispatching of demand note
20th - 25th May	Check if the tenant paid the outstanding rent. If no reaction or receipt of payment - trying to reach the tenant by phone.
3rd June	Due date of payment of the rent
10th - 15th June	Analyse of outstanding payments and dispatching of demand note with the threat of cancellation of the tenancy.
20th - 25th June	Check if the tenant paid the outstanding rent. If no reaction or receipt of payment - trying to reach the tenant by phone or personally. After all cancellation of the tenancy.
30th June - 05th July	Check if the tenant paid the outstanding rent. If no reaction on the cancellation or receipt of payment - engagement of a lawyer for action for ejectment and delinquency procedure.
6 - 12 months later	The tenant is ejected by a bailiff.

## How to minimize the risk of outstanding payments

### Strategy in buying properties

The risk of non paying tenants can be essentially minimized during the period of buying the building. Attention has to be paid to the unemployment rate, as well to the economical and population structure of the city and the area in the city.

### Choice of new tenants

New tenants should be chosen in view of his/her monthly income, position, duration of working time in the current company.

It is also very important to check the solvency of a new tenant. It is necessary to have a contract with a company that checks the solvency, e.g. Schufa in Germany. They check if the person who is interested in getting the flat has some debts that they did not pay on time; receive an summons in the recent years etc.