

CHECKLIST: ARREAR RENTAL PROCESS

THESE ARE THE STEPS THAT SHOULD BE FOLLOWED TO SECURE PAYMENT OF OUTSTANDING RENT

The process of claiming arrear rental is started by the landlord sending you a "letter of demand" that asks for payment of the rent you owe. This letter should state the exact amount that is owed. They can send you more than one letter of demand.

If payment is not made after receiving the letter of demand, then the landlord can start the court process of claiming the money from you.

You will know the court process has started because the sheriff will serve a summons on you. The summons is sometimes called a Rent-Interdict Summons.

When the summons is served, the sheriff will write up a list of what items of furniture you have in the rented property and their approximate value.

In legal language, this is called attachment. The sheriff does this because in law there is something called a landlord's "tacit hypothec" which gives your landlord some right to your possessions (but not the essentials) as security for money you owe them. This does not mean your things can just be taken and sold at this stage. The sheriff is allowed to list them, but only if the court makes an order that you owe the landlord money can they come back to take and sell some of your possessions so that the money can then be given to the landlord to offset your debt.

You have 10 working days from when the sheriff gives you the summons to formally indicate to the court and to the landlord or landlord's attorney whether you want to defend the summons. You do this through a notice of intention to defend.

If you don't have a lawyer you will see in the summons there is a section which says notice of intention to defend. You can fill out this section and make copies of just that page and then go and give a copy to your landlord/landlord's attorney and you must also go and give it to the clerk of the court.

REASONS YOU MIGHT DEFEND A SUMMONS :

- YOU DISAGREE WITH THE AMOUNT THAT THE LANDLORD SAYS YOU OWE
- YOU DON'T OWE THE MONEY AT ALL
- YOU HAVE ANY OTHER LEGAL DEFENCE TO THE CLAIM.

If you don't defend the summons in time, the landlord can go to court and ask for something called default judgment. This is where judgment is granted because you have not defended.

If you defend the summons the next step will be to file a plea where you set out your side of the story and why you don't owe the money that the landlord says you do.

If you do not file a plea then the landlord can also go to court ask for default judgment.

Note that the process for claiming rent is a separate legal process from eviction. A summons can be served at the same time as an eviction application, but they are two separate legal processes aimed at achieving two separate things (repayment of money in the case of summons and eviction in the case of eviction application) Even if you are evicted this does not change the landlord's right to claim from you money that you owed the landlord for the time that you were staying on the property in terms of the lease.



Please note this is just the beginning of the process and you should seek legal assistance to guide you through the rest.