

REMEDIES

1. When there has been a breach, the Landlord has several remedies, each of which are mutually exclusive:
 1. A. File a Rule for Eviction to gain possession of the premises. Landlord follows the procedures allowed by the Louisiana Code of Civil Procedure. The Landlord may also file a separate, ordinary action to recover past due rent and any damages to the property. By taking this approach, the Landlord can not seek future rent - only the amount of rent incurred while the tenant occupies the unit. The Rule for Eviction is summary in nature, and usually the hearing is held quickly. The Landlord may also file a separate suit for any past due rent and the rent that will accrue up through the point the Tenant has possessed the unit. This is an ordinary action, must be served and answered, and takes longer to resolve.
 2. B. Sue for accrued rentals and accelerate future rentals. This means the Tenant maintains possession of the property, and the Landlord may enforce the judgment as any other money judgment, ie, garnishments, seizures, etc. However, the Tenant maintains possession of the unit.
 3. C. If premises are abandoned, Landlord may sue for accrued and future rents, but Landlord has the obligation to re-rent the unit, and then must credit Tenant with rent received from new tenant. In fact, the Landlord steps into the shoes of the Tenant and basically acts as a sub-lessor. Therefore, any rent collected during the period the Tenant should have been in the unit is credited towards any amounts owed by the Tenant.
2. By and large, most residential and apartment rentals involve option A, without a separate suit for recovery of accrued rentals. Landlord must give a 5 day "Notice to Vacate". That is five business days, exclusive of holidays. At the end of that period, if tenant is still in possession, Landlord may file a Petition of Eviction. The Notice to Vacate requirement may be waived in writing, and that is usually the case in most Louisiana leases. However, the waiver should be for the full five days - not some type of clause setting the time limit to 3 days, or 2 days, etc. If Landlord gives Tenant some kind of notice that says "notice to vacate," then Landlord has "waived the waiver" and is bound to wait the 5 days before a rule for eviction can be instituted.
3. When the Petition for Eviction is based on non-payment of rent, the acceptance of any rent from the Tenant after the Notice to Vacate is given vitiates the effect of the Notice to Vacate and maintains the Tenant in possession. If the Petition for Eviction is based on some other breach of contract, the Landlord may accept rent, but depending on facts and circumstances, may have to refund a portion of the rent to the tenant.
4. Because, as mentioned above, the law disfavors cancellation, here are some practical examples of payment issues and ways of handling them:
 - o A. Rent is \$500. Tenant tenders \$300 on the 5th of the month. Landlord can accept the partial payment, and then proceed with a Petition for Possession because balance of rent was not paid timely. Meaning, acceptance of partial

payments does not vitiate Landlord's ability to seek cancellation of lease where balance is not paid. However, if Landlord files a petition for eviction with very little rent due and owing, the court is more likely to make Landlord accept payment from Tenant if Tenant has the funds by the date of hearing.

- B. No rent paid at all. Rule for Eviction filed on 15th, Hearing set on 21st. Tenant contacts Landlord or comes to the hearing with all money, including late fees and court costs. Landlord may accept the money, and Rule is dismissed.
- C. No rent paid at all. Rule filed on 15th, Hearing set on 21st. Tenant is able to offer much of the rent, but is short \$150. Landlord should not accept the money (unless he wants to dismiss its Petition), and should tell Tenant to appear in court. The Court can issue a Consent Judgment the day of hearing in which the terms and conditions of payment are set forth in writing. Typically, Judgment will be a two step procedure:
 - "Defendant agrees to pay \$400 by 5:00 pm 10/21/06; otherwise, Writ of Possession is enforceable. Further, Defendant to pay \$150 by 5:00 pm 10/24/06; otherwise, Writ of Possession is enforceable."

By this agreement, if Tenant does what he commits to do, he remains in possession. If not, then Landlord can evict him.

- D. Petition is filed on the 22nd, Hearing set on 28th. Now our facts are later in the month. At this point, if the Tenant is willing to pay the rent, late fee and court costs as in the examples above, it will not be held against the Landlord for still exercising the option of settling with the Tenant.
- E. No rent paid at all. Rule filed on 15th, Hearing set on 21st. A couple of days before the hearing, the Tenant places some of the rent owed in Landlord's drop box. Landlord is not willing to accept Tenant's offer of payment. A reasonable effort should be made by Landlord to notify Tenant that partial payment is not acceptable. If possible, give the payment back to Tenant, preferably with witnesses. Worst case, bring the payment with you to court and explain the attempted payment to the court.

NOTE: Managers/Owners have asked: "Do I have to take accept their money?" The answer is: "Sometimes yes, sometimes no." There is no real economic reason not to accept rent, late fees and court costs from Tenant, especially when couched in terms of a Consent Judgment. Because the law disfavors dissolving the lease, and because it is subject to judicial control "according to the circumstances," there should be no iron clad rule against accepting rent, late fees and court costs, regardless of when it is offered. Depending on the facts and circumstances, the court may order a short payment plan. Managers are sometimes laboring under the mistaken impression that because they've paid court costs, they feel they "deserve" or are entitled to a judgment of eviction. Remember, you are paying to be heard and to have a fair hearing. There may be some extenuating circumstances that merit giving the tenant additional time to pay what is owed.

1. Accepting any money after the Judgment is rendered renders the Judgment null (unless payment has been in accordance with some form of Consent Judgment referenced above.)

Accepting money after judgment has been issued does not create a pattern of accepting money late.

2. Tenant is “causing problems” but manages to pay rent timely. Landlord should review lease and explore possibility of simply terminating lease. Most leases are written as 6 month leases that roll over into a month-to-month term. The easiest way to end the relationship (other than non-payment) is to simply terminate the lease. While a tenant may claim such termination is done on retaliatory grounds, the courts have held that either party may cancel a month to month lease at the canceling party’s discretion. Of course, all contracts must be performed in good faith. The court will determine whether such cancelations have been in good faith.
3. Tenants are believed to be “causing problems” or causing other breaches of the lease agreement. If Landlord tries to evict Tenant based on something other than non-payment of rent, good evidence has to be brought into court to cover such breaches - Not hearsay, but actual witnesses, photographs, recordings, etc. Police reports and/or security guards reports are hearsay and not given great weight. Again, it is usually easier to terminate the lease based on expiration of the lease term than to litigate the alleged breach of lease.
4. Repairs. The Landlord has the obligation to keep the Tenant in peaceable possession, and to maintain the premises in the condition fit for their purpose. If landlord fails to make a needed repair, Tenant can make the repair at his expense and withhold that amount from next month’s rent. Just as Tenants may not hold rent hostage for repairs, the Landlord can not hold failure to pay rent as an excuse not to make needed repairs. If the court finds Landlord has unreasonably failed to make needed repairs, the court won’t let the Tenant “live for free,” but will consider some type of set off in favor of the Tenant for Landlord’s failure to made the needed repairs.
5. Landlord may file suit for past due rent, and couple it with a Writ of Seizure to enforce Landlord’s privilege. This is a separate suit, and proceeds more slowly than the Petition For Eviction. All property seized must be stored at cost of Landlord until final judgment and Constable Sale. Very often, when a Tenant can not afford to pay rent, he does not have items that are exempt from seizure of a sufficient value to merit filing this type of action. However, this option should be considered if the circumstances justify its use.
6. If premises are abandoned, Landlord may re-take possession and re-let the property. Extreme caution is recommended. Some Landlords are conservative and go through the eviction procedures where the value of property remaining exceeds \$100. The court can not “recommend” what Landlord should do under a given set of circumstances.
7. The security deposit is just that - security that is used as an offset against whatever the Tenant may owe the Owner. It is not lagniappe. Although most leases contain language that state that Tenant “forfeits” the security deposit if the Tenant fails to complete the term of the lease or abandons the lease, in reality it is to be used as an offset against whatever amounts are owed to Owner. For example:
 - o Brown rents a house to Doe for 12 months at \$800 per month, with a \$600 deposit. Doe abandons the property in the middle of month 4 without paying month 4’s rent, and Brown is able to re-rent the home to another tenant at the beginning of month 6, but for only \$700 per month. What does Doe owe to Brown?

All of month 4 rent or \$800. All of month 5 rent \$80. Months 6 - 12 difference (6 X \$100) \$600 Subtotal \$2,200 (minus security deposit - \$600) Net amount owed \$1,600.

In Louisiana, normally one can't sue for more damages than he has suffered. In breach of contract cases like those involving leases, this means adding up all damages (past due rent, damages to the property, etc). Once that amount is figured, then the deposit should be subtracted. Another way to think of it is as follows: Suppose you didn't request a security deposit. How much would you sue for? The same amount, but you wouldn't have had a deposit to use as an offset. That is why the deposit is not "extra."