

Protect your home despite rent arrears?!

Rent and fuel bills should have top priority! Paying rent is more important than paying off debts (however much pressure the collection agency may be putting on you....)!

Rent arrears threaten your existence because in the final event you face **compulsory eviction and homelessness!** It is in your own interests to make sure that rent and fuel bills are paid regularly.

Set up a standing order with your bank or arrange for the employment office (ARGE) or social services department (Sozialamt) to transfer your rent directly to the landlord.

When could I be faced with immediate termination of tenancy because of rent arrears?

Your landlord can terminate your contract overnight as soon as the total arrears are equivalent to two months' rent plus ancillary costs (German: "Warmmiete"). The tenancy agreement may even be terminated immediately if in two successive months the total arrears are equivalent to more than one month's "Warmmiete".

*The landlord must be in receipt of the rent by the third working day of the month. Any claims for additional payment arising from the statement of ancillary charges for the preceding year do **not** entitle the landlord to terminate the agreement without notice.*

Does the immediate termination of the tenancy agreement have to be in a specific form?

The tenancy agreement must be terminated **in writing**. The letter of termination must be sent to **all tenants**, and the **reason for the termination** must be stated (e.g. „immediate termination of the tenancy agreement due to rent arrears totalling....“).

Immediate termination ends the tenancy agreement immediately unless a period of grace was granted in the letter of termination.

If you continue to use the accommodation after this time, you are liable to pay an amount for the use which must be at least the same as the rent.

How can you prevent the landlord from terminating the tenancy?

If you can no longer pay your rent punctually, you should inform your landlord immediately. Explain to him why you cannot pay your rent at the moment. Many landlords will show understanding and allow you a payment respite if they can see that payments will be made in future.

Examples: Apply for housing benefit; arrange sub-tenants

If your rent arrears have reached the "critical limit" of two months' rent (or more than one month's rent in two successive months, then the landlord loses his right to terminate the tenancy if you pay the entire arrears before receiving written notice of termination.

Possible sources of money: Employer loan; support from relatives

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What can you do if your tenancy has been terminated and an eviction order has been applied for?

If your landlord has applied to the court for an eviction order, you may be ordered to vacate the premises and become homeless. You should apply immediately to the social services department (e.g. the housing protection office (Wohnungssicherungsstelle)) in your town or rural district.

Apply for a **loan to cover rent arrears (Übernahme der Mietschulden als Darlehen)**.

The legal basis for this is Book XII, § 34 of the German Social Code.

If you draw unemployment benefit II (Hartz IV), you should inform your personal advisor at the employment office or job centre about the eviction order and apply for them to assume your arrears in the form of a loan (repeatedly if necessary). The legal basis for this is § 22 5 of Book II of the German Social Code.

The department will check whether you will be able to pay the rent yourself in future and also whether the rent amount is acceptable (if you receive social benefits).

§ 22 5 of Book II of the German Social Code does not foresee any reduction in future unemployment benefit II payments. If you have entered into an agreement to pay instalments, this is voluntary and can (even if it is described as "irrevocable") be terminated with future effect at any time if the remainder of the social benefits is not enough to live on.

Remember:

Tell the court (and your landlord) that you have applied for a loan to cover rent arrears. Always quote the case number of the eviction order. Always reply to all enquiries from the court punctually!

If another person or department assumes the rent arrears in time (i.e. all rent arrears and any payments for use of the accommodation are paid in full), the immediate termination of the tenancy becomes ineffective and the old tenancy agreement enters in force again.

Remember:

The landlord must be in receipt of payment (or alternatively the declaration from the department that they will assume the rent arrears) **within two months!** The period begins on the date the eviction notice is served on you.

If the department refuses to assume the rent arrears, you may lodge an **objection** to the letter of refusal. In case of dispute you should also contact a citizens advice bureau or a debt advice bureau for help or seek legal advice from a lawyer specialising in social law (obtain a counselling services certificate first (Beratungshilfeschein)).

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What can you do if the eviction order has been issued?

If you need time to look for new accommodation, you should apply to the court for a **reasonable vacation period**. Vacation periods (generally an initial 3 months) may be extended if you apply in good time (2 weeks before the period expires).

The **compulsory eviction** by the bailiff (Gerichtsvollzieher) using a transport company and locksmith should be avoided since the costs (which the landlord has to put up in advance) are very high. Many landlords will still be willing to negotiate even at this stage and allow you to move out voluntarily.

If your situation has improved (e.g. new job) some landlords may be prepared to stop the compulsory eviction and give you a second chance. Even at this stage the social services department may still assume old rent arrears so that there is nothing standing in the way of a **new tenancy agreement**.

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