

## **On Rent Due Dates**

by Wojciech Kic

Landlords undertake several important steps to create a profit in a rental property. Starting with a vacancy, the landlord must commit the necessary amount of time and financial resources to complete the make-ready maintenance, advertise the property, show it and interview the prospective tenants.

After finally receiving a verbal commitment from a prospective tenant to lease a property, the landlord would make an appointment with the prospect to sign the lease agreement. The purpose of the lease agreement is to define the duties and responsibilities of each party during the lease. The lease agreement calls for a time-limited surrender of the property by the landlord in exchange for the rent payments from the tenant.

As the lease agreements expand in length and complexity, and may vary somewhat from landlord to landlord, most leases contain similar clauses. The landlords should understand all lease clauses and ensure that the day-to-day actual practice of the management of the property does not digress from the clauses of the lease agreement. When tenants understand the lease agreement clauses better than the landlord, the control of the lease agreement invariably tips away from the landlord.

One of the essential residential lease clauses concerns the rent payment due date. Customarily, the rent is due for the entire lease term, in equal payments, on the first day of each month. Defining the rent due date on the first day of each month creates a comfort zone to the landlord. If the rent payment due date is not the same as the tenants' presumed payday, landlords may ask, where would the funds for the rent payment come from later?

In addition, landlords who own several properties typically use the first day of the month as the rent due date out of business convenience. Allowing different tenants to pay on different due dates would create a lack of financial predictability that landlords require to manage a rental property. This includes timely payments of the landlord's obligations.

Because landlords commonly believe that the first day of the month accommodates the payroll day of most tenants, they frequently accommodate the requests from the tenants whose pre-set payroll date is different than the first day of each month. Landlords who accommodate such tenants would define the rent due date, for example, as the 5th day of each month. Of course, the landlords may accommodate a different rent due date for any seemingly valid reason.

While often overlooked, the rent due date is one of the real estate cannons. In real estate, the rent is due in advance of the next rental period (month). In the real world, the rent is commonly due at the beginning of the rental period: the first of each month. The real world practice of defining the monthly rent due date as the same day as the first day of delinquency weakens the integrity of the lease agreement.

In order to effectively manage the property, the landlord must separate the rent due date from the first day of delinquency. To illustrate, let's use a one-year lease agreement for a single-family house effective September 1, 2004, to August 31, 2005. In this lease, the last day for timely rent payment of February 1, 2005, would be January 31, 2005. When would a delinquency begin? The delinquency begins on February 1, 2005.

The clarity of the due date in the landlord's mind accommodates different management purposes. Unless the landlord understands when the rent is past due, she will never know when the tenant is delinquent. Should the payment of the rent on the 10th of the month, for example, be considered late? How about a tenant's challenge that he only has one day to pay the rent on time? After all the rent was due on the 1st. Right?

The error of defining the rent due date as the same date as the first date of delinquency is further explained away by the landlords by the concept of a grace period. Why bother? Since the tenant has a full 30 days to prevent default, grace periods invite the tenant to default. The tenant's default becomes a permitted feature of the lease agreement!

Understanding the rent past due date, on the other hand, provides the landlord with decisiveness to quickly and efficiently manage a delinquency. The three-day vacate notice is served on the 1st of the month. The landlord's immediate response to the delinquency ensures the continuity of the lease. All rent checks not including the late charges are returned to the tenant. The landlord's ability to refuse the rent payment ensures complete rent payments.

Accepting partial payments including late rent payments without a late charge, means working with a tenant. Working with a delinquent tenant means working against the landlord's self-interest. Should the landlord ever accept late rent payments? Not as long as the rent payments do not include all charges due even if the delinquency occurs on a regular basis.

The tenants exploit contradictory lease clauses to their advantage. The landlords should not call tenants difficult in such situations. Since the landlords typically prepare the leases, fairness allocates the benefit of a doubt to the tenant. In case of conflict with a tenant, it is an advantage the landlords cannot afford to lose!

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