

Sectional title and duties of bodies corporate

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LANDLORDS and tenants in a sectional title scheme have additional responsibilities to ensure that their rights and obligations arising from a lease contract are protected from “interference”.

The relationship between tenant, landlord and a body corporate can be acrimonious when parties are unaware of the legal boundary that clearly lays down each party’s rights, duties and responsibilities. Essentially, a lease between tenant and landlord is a contract that allows the tenant full and undisturbed use and enjoyment of the dwelling for a temporary period.

The owner’s and tenant’s rights and responsibilities are contained in the Rental Housing Act, 50 of 1999 (RHA), and aspects of the common law and law of contract not modified by the RHA. The owner’s rights and responsibilities to other owners in a sectional title scheme are governed by the Sectional Titles Act 95 of 1986 (STA), recently amended in November 2003.

A body corporate is made up of all the owners who elect trustees to manage the sectional title scheme. Most trustees must be commended for the good work they do given the fact that they are laypersons. Trustees have tremendous powers and are compelled to perform a very complicated and demanding job, often acting as mediators, peace officers, debt collector, and administrators.

The (STA) makes provisions for management and conduct rules that fine-tunes specific duties expected of individual owners and their visitors and tenants. The challenge faced by bodies corporate is not when an owner falls into arrears with his or her levy, but when the owner decides to rent the unit to a tenant.

Most bodies corporate have a policy that enables them to have a decisive say, if not an absolute right, in the choosing of a tenant. This requires a prospective tenant being interviewed by a “committee”.

When a tenant breaches the conduct or house rules, some trustees believe that they have the right to cancel the lease and have the tenant evicted.

This results in a bitter struggle between parties and sometimes develops into a perception that if a tenant is not “liked”, a trustee can take whatever action deemed necessary- to the extent of disconnecting basic services or denying the tenant entry to the building.

There are instances where prospective tenants felt they failed the interview because they did not belong to the “right” racial or religious group, or for being a single parent. The individual owner has the right to interview a prospective tenant and enter into a lease without the “assistance” of the trustees. It is incumbent for the owner to make the conduct rules and house rules (rules) part of an oral or written lease in terms of the RHA, so that the tenant can be familiar with all the requirements of the lease, together with the rules.

Should the tenant breach the rules, the landlord can follow the procedure for breach and eventually has the right to cancel the lease. The body corporate cannot terminate a lease, but it can take action against the landlord for failing to take remedial action in terms of its management and conduct rules.

No rules can supersede the constitution of the country. In fact, all laws, including common law, regulations and even parliamentary rules, are subservient to the constitution, which is deemed to be the only system of law.

An individual owner must decide whether to cede his or her constitutional rights and the rights and responsibilities as a landlord to a trustee or the body corporate. Unless this is done, the landlord and body corporate can be taken to task by the tenant if his or her rights are violated.