

A LANDLORD AND HIS TENANT

Government bound by same laws as private lease

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Section 26 (Housing) of the South African Constitution states:

- Everyone has the right to have access to adequate housing.
- The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

WHAT are the rights of a tenant living in a dwelling owned by the government -national, provincial or local? Is there a difference between a private landlord and the government in respect of a residential tenancy? Rights do not exist without responsibilities, so the question may be rephrased as: "What rights does the government have regarding a tenant?"

The Rental Housing Act, 50 of 1999, refers to the government's responsibility to create mechanisms to promote the provision of rental housing and to promote access to adequate housing. Does this mean a tenant can refuse to discharge his / her responsibilities to the government as a landlord since it is obliged to provide access to housing? Or, can the government abandon its duties as a landlord once it has housed a tenant? A lease agreement - oral or written - concluded by the government and a tenant places the parties on the same footing as a private lease.

Lease

The government makes available the dwelling for the temporary use and enjoyment of its tenant. There must be agreement on the rental to be paid; and when, where and how it is to be paid. The lease cannot be changed unless both parties agree to do so. The tenant must pay the rental on time and in full and the government, as landlord, must maintain the dwelling.

In this tenant-government / landlord relationship, either party can lodge a complaint with the provincial Rental Housing Tribunals to terminate an unfair practice. The government can claim arrear rentals through the Tribunal or obtain a ruling to stop overcrowding.

An aggrieved tenant can approach the Tribunal to compel the government to carry out repairs or to maintain the dwelling.

Parties can also exercise their common law rights or follow legal guidelines laid down by the courts.

Should the government fail or refuse to carry out necessary repairs, the tenant can place the landlord on terms. A letter or notice should give a 14-day period for the landlord to do the repairs. If the landlord refuses or fails to respond, the tenant can attend to the repairs himself / herself and deduct the costs of such repairs from the rental, or claim a reduction in rental through the Tribunal.

Receipts

Receipts and cash sale slips are important for proof of money spent and may need to be produced as evidence should the case go to court.

Other options available to a tenant include cancellation of the lease or suing the landlord for breaking the lease contract. However, such repairs or maintenance should not be merely to remedy an inconvenience, but where the use and enjoyment of the dwelling would be impossible without the repairs. Repairs may not be an excuse to prevent or delay the landlord from exercising its rights, for example, lawful eviction, claim for arrears or terminating the lease due to tenant's failure to stop nuisance.

Dr. Sayed Iqbal Mohamed, Chairperson, Organisation of Civic Rights; Member of the KwaZulu Natal Rental Housing Tribunal and Council of Canadian Administrative Tribunals.
www.ocr.org.za

For advice, contact Pretty Gumede or Loshni Naidoo on 031 3046451