

# Rental pitfalls for unwary landlords

**If the lease allows, a tenancy may be renewed once prescribed conditions are met**

## **Renewal of lease and the “*huur gaat voor koop*”**

Last week article we looked at the “*huur gaat voor koop*” rule, that is, a common law principle that the “lease goes before sale” or the new owner “steps into the shoes” of the previous owner / landlord; so the lease contract remains unchanged. What is the position of a renewal clause when ownership is registered in the name of the buyer?

Take the case of a fixed lease of two years where the owner concluded the lease agreement with his tenant. The lease ends on May 31. Eighteenth months into the lease, the landlord sells the dwelling and provides the tenant with the details of the new owner. Let us examine a renewal clause in the fixed lease for a period of two years. The tenant was given the option to renew the lease for a further two years, provided she informed the landlord in writing of such intention, two calendar months before the lease ran its full term.

We will look at three possible types of renewal, one without changes to the extended lease and two with changes.

**Example 1:** The renewed lease would be on the same terms and conditions:

“The tenant has the right to renew this lease for a further two years, on the same terms and conditions contained in the original lease, provided she notifies the landlord in writing two calendar months before the expiry of the lease.”

**Example 2:** The renewal of the lease would be conditional:

“The tenant has the right to renew this lease for a further two years, on condition that she has not breached the lease .She must notify the landlord in writing two calendar months before the lease expires, of her intention to renew this lease.”

**Example 3:** “The tenant has the right to renew this lease for a further two years, notifying the landlord in writing two calendar months before the lease expires of her intention to renew this lease. The rental under the renewed lease will be R2500.00 per month with no further option to renew.”

The tenant in exercising the option must remember that the rules of offer and acceptance apply. The tenant who sends the letter of renewal by registered post (as required by the lease) to the landlord’s address as stipulated on the lease as the address of all

communication, would have complied with proper service even if the landlord failed to notify the tenant of the change of address. A tenant who gives notice on April 2 when the lease terminates on May 31, has failed to provide two calendar month’s notice.

## **Is the new owner/landlord bound by the renewal clause?**

The new owner, who buys the dwelling with the lease, as stated previously, becomes the landlord and the relationship between the tenant and the “new” landlord continues. If the new owner was not aware of an existing lease, he or she is still bound to the lease but may have a delictual claim against the seller or some legal remedy available in such an instance.

The new owner acquires all the rights of the original or previous landlord under the lease.

The tenant is under obligation to carry out all the duties and responsibilities as if there was no change of ownership.

Rights and obligations are contiguous, the tenant and landlord mutually dependent. The tenant’s rights must be reciprocated by the landlord’s performance of his obligation and the tenant must fulfil his/her duties and responsibilities emanating from the lease for the contractual terms and conditions to be realised.

In summary, the renewal of a lease must be separated from the landlord's intention to sell or the actual sale and subsequent transfer of the dwelling to the new owner. The new landlord is in the same position as the previous landlord should there be a change of ownership during the fixed period and the tenant exercised his / her right to renew within the prescribed period required. Renewal of the lease is binding on the new landlord according Appellate Division (Supreme Court of Appeal) cases, e.g. Uys & another v Sam Friedman Ltd 1935 AD 165 and Hitzeroth v Brooks 1965 (3) 444 AD . Next week we will discuss the cases to see how the courts have laid down the law.

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