

An excuse to eject tenant

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A recent trend is for certain estate agents to present a new lease agreement to existing tenants. The tenant is given a statement with the cost of the lease and stamp duties. A breakdown of the cost also includes a rental increase (often by R300.00 to R500.00) as well as an increase in the security deposit.

Some agents prefer their own leases and when a landlord engages the service of an agent or changes over to another agent, the tenant ends up bearing unnecessary costs. Sometimes, tenants are faced with impolite responses from certain agents when they query the need for a new lease and the related costs.

Why should the tenant bear the lease costs and stamp duties? Why a new lease? The response varies but one response seems universal, that is, "if you are not happy, find another place; we have a long waiting list".

Landlords are also burdened by the costs of "drafting" a lease that is usually stored on an agent's computer or attorney's computer. Often very little change is required other than the details of the landlord and tenant.

In fact, when one compares leases "drafted" by the same estate agent or an attorney for different landlords, the changes are negligible but the costs for the landlords and tenants are exorbitant.

A tenant is not legally compelled to sign a new lease and a lease cannot be changed while it is in use, unless both the landlord and tenant agree.

Section 5(1) of the Rental Housing Act 50 of 1999 states that a lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 of 1969); s5(2) states that a landlord, must if requested by a tenant, reduce the lease to writing.

The tenant is not legally obliged to pay an additional amount on the existing deposit unless there is an escalation clause. To terminate the existing lease (oral or written) for any of the above reason would be an unfair practice in terms of the provisions of the Rental Housing Act.

Where a written lease includes an escalation clause for the security deposit and allows for a termination, the tenant's refusal to pay the additional amount on the deposit or to sign a new lease will constitute an unfair practice and the landlord can take legal action that may result in the tenant being evicted.