

Compromise means both parties in mediation are winners

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The relationship between tenant and landlord often starts off on a friendly basis when they enter into a contract of lease. During the lease period or by the end of it, some relationships would have deteriorated to the point that outside intervention becomes necessary.

Frank entered into short term written lease with Jenny to rent her upmarket dwelling. He paid a deposit of R4000 to her agent and a further R750 for the cost of the lease. The rental was R4000 a month and the parties further agreed that the lease would be for a fixed period (six months); neither the tenant nor the landlord provided for a renewal or extension to the lease. In fact, Frank was adamant that he required the dwelling for six months only, from February to July. The lease ran its six-month period, but Frank moved out on a Monday, August 3. He was furious when he received R2000 two weeks later, being the refund of his deposit. A letter from Jenny accompanied the cheque wherein she stated that she deducted R1650 for the late vacant occupation of her dwelling that prejudiced her financially. A receipt of R350 for repairs carried out was attached to her letter for alleged damaged to the dwelling. She specified that the R2000 was conditional on Frank appending his signature (indicating acceptance) to the copy of the letter and returning it within three days. Frank lodged a complaint with the provincial Rental Housing Tribunal for unfair practice. At mediation, Jenny said she was “generous” in her offer since she

did not claim the actual proportionate rental due

to her. Frank rejected the R2000. The matter was thereafter set down for a hearing.

After hearing evidence from both parties, the Tribunal gave its ruling. It was clear from the evidence that Frank had to vacate the dwelling not later than the last day of the sixth month, i.e. July 31. Jenny lost a tenant who wanted to move into the dwelling on August 1. Another tenant was found during the course of the month that took occupation on the August 18. Frank was therefore liable for 17 days rental, three days for occupying the dwelling after the lease expired and had, in fact, terminated and 14 days for the period the dwelling was unoccupied. Jenny’s claims for damages was rejected because she did not carry out an inspection of the dwelling with Frank before he took occupation, and failed to do so towards the end of the lease period as required by the Rental Housing Act, 50 of 1999.

The Tribunal’s ruling awarded Jenny proportionate rental due to her. Frank was therefore legally responsible for R2 267. This meant that the actual refund of his deposit was R1 733. At mediation parties have to compromise. The “give” and “take” results in an agreement where both parties walk away as “winners”. A hearing ends in a ruling (equivalent to a magistrate court judgement) that usually has a “winner” and a “loser”.