

Existing situation governs the right to levy charges

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THE wording of a document and its interpretation can sometimes be problematic, especially when one party intends to enforce provisions of a lease and the other opposes it.

Let's take the case where a landlord intends to increase the rental, security deposit and introduces charges for water consumption and the use of a parking bay.

The notice to the tenant states that in terms of the lease agreement, "please note the following: -

1. Rental will increase by 8%. Please pay on the 1st of each month to avoid interest charges.
2. The security deposit needs to be increased to an amount equal to the new rental.
3. You are expected to pay R80 towards the water account
4. R100 is the rate for the use of the parking bay."

The lease agreement states 8% and that interest would be charged for late payment. The rental is payable on or before the 1st. The

tenant is obliged to pay the increase.

A clause in respect of the deposit required from the tenant at the time of signing the agreement to pay an amount equivalent to one month's rental. There is no other reference to or provision dealing with the deposit.

The tenant is not required to "update" the deposit in terms of the agreement and cannot be compelled by the landlord.

The water account was to be shared between the tenants in the event the consumption charges exceeded R2000.00, an amount the landlord undertook to pay.

A flat rate of R80 to be levied was therefore not part of the agreement. Further, the tenant is within his / her rights to ask for the water bill to verify the exceeded amount. The tenant was previously allowed use of the parking bay without payment of a levy, and the lease agreement is silent on this point.

The tenant is therefore not responsible for the levy and the landlord cannot prevent the tenant from using the parking bay.