

# Illegal contract terms not binding

Sayed Iqbal Mohamed

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CAN a clause that is not legal bind parties to a lease contract? Let's take the case of a "lockout for non-payment of rental" and "non-refundable deposit".

Parties enter into a lease agreement that includes the rental amount to be paid and the date on which payments are to be made. Under the heading "Breach", a clause is inserted which states that in the event the tenant fails to make payments as per the lease contract, the landlord reserves his rights to change the lock to the main entrance to the dwelling.

When the tenant breaches and the landlord locks out the tenant, can the tenant rely on the courts for relief? After all, the tenant did sign the agreement and therefore agreed to the lockout! Section 15(1) of the Rental Housing Act 50 of 1999 makes lockout *unlawful*, as well as in terms of the various provisions of the Act.

In a lease contract it is stipulated that the security deposit to be paid before the tenant takes occupation, and this amount is non refundable. During the currency of the lease the tenant realises that in terms of the Act a deposit is refundable, and

certain conditions apply to both tenant and landlord.

The landlord is quite adamant that the deposit is not refundable as agreed, although this provision of the Act is non-negotiable.

Section 5(3) as previously discussed outlines the process to be followed by parties regarding inspection of the dwelling, receipts, deposits and how and when it is refunded with accrued interest.

It sets out the rights and obligations of both parties in detail. Section 5(4) reads" "The standard provisions referred to in subsection (3) may not be waived by the tenant or the landlord."

The tenant is therefore not bound to this aspect of the agreement and can lodge a complaint with the Rental Housing Tribunal regarding an "unfair practice".

The Tribunal is empowered to give a decision that may include making the particular provision of the lease unlawful, that is, the lockout and non-refundable clauses.