

Lease contract is as safe as houses

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WHEN a tenant and landlord enter into an agreement it does not become a contract-that is to say, it is not legally binding-unless they meet all the legal requirements. Clear consent of the parties is an essential element and the consent must be straight-forward.

When a tenant and landlord decide to enter into a written lease contract, they bind themselves to do certain things. The parties agree on the dwelling to be let and the landlord lets the dwelling in return for a rental that is specified, so that the tenant has its use and enjoyment for the period agreed upon.

The common law is the basis for the tenant and landlord to enter into a lease contract. The common law can be modified between the parties by way of a written lease contract. The parties can agree that the tenant undertakes to do internal maintenance and repairs to the dwelling.

Once parties agree to the terms and conditions, they are legally required to carry out what they accepted. Often, tenants sign a contract to lease, but do not read the document before signing it-nor do they even bother to read it later.

A contract is a powerful instrument to safeguard the rights of both tenant and landlord. The Rental Housing Act 50 of 1999 (the Act) did not only change certain aspects of the common law, but also the law of contract regarding a residential lease contract.

This means that a landlord who generally presents a lease to a tenant has to include conditions in the lease required by the Act. If omitted, the lease would be deemed to have these conditions.

Also, a written lease contract can no longer contain clauses that infringe the rights of either the tenant or landlord in terms of the provisions of the Act. Section 5(6) of the Act states a lease contemplated in subsection (2) must include the following information. Subsection (2) states that a landlord, must, if requested to by a tenant, reduce the lease to writing:

- (a) The names of tenant and landlord and their addresses in the Republic, for purposes of formal communication;
- (b) The description of the dwelling which is the subject of the lease;
- (c) The amount of rental of the dwelling and reasonable escalation, if any, to be paid in terms of the lease;
- (d) If rentals are not paid on monthly basis, then the frequency of rental payments;
- (e) The amount of the deposit, if any;
- (f) The lease period, or if there is no lease period determined, the notice period requested for termination of the lease;
- (g) Obligations of the tenant and the landlord, which must not detract from the provisions of subsection (3), or the regulations relating to unfair practice;
- (h) The amount of the rental, and any other charges payable in addition to the rental in respect of the property.

In addition to these, there are other provisions that must be included, or is deemed to be included in a lease contract. It is important for tenants and landlords and their representatives to have a good understanding of the Act, because their relationship is both determined by and depends on