

LEASE IS BINDING DESPITE CHANGE OF OWNERSHIP

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The sale of a dwelling generally does not affect the lease concluded between the tenant and the previous owner (seller). There are exceptions, but this article will focus on the “huur gaat voor koop” maxim, a common law principle of great importance.

In simple terms, it means the new owner “steps into the shoes of the previous owner / landlord”. In other words, the sale of the dwelling that leads to the change of ownership does not break the lease. The new owner becomes the landlord and the relationship between the tenant and the “new” landlord continues. The new owner acquires all the rights of the original or previous landlord under the lease.

Several cases on this point were decided by the Appellate Division in the 1930s and 1940s and the Provincial Divisions in 1904. In recent years the courts had to deal with the question of whether a tenant was bound to a fixed period lease when change of ownership took place. Can the tenant terminate a lease when the new owner acquires the rights of the previous landlord?

There are instances where the courts held the view that the tenant was not bound by the lease in the case of change of ownership and could therefore terminate the lease.

A landlord who was told by judge Squires that his tenant was entitled to terminate the lease took the case on appeal to the Appellate Division.

In a unanimous judgment, the Appellate Division clarified this point and concluded that the tenant was not entitled to cancel the lease when the new owner bought from the original landlord.

The new owner / landlord is required by law to recognise the tenant and is not allowed to “break” the lease as long as the tenant observed the conditions of the lease. Similarly, the tenant has to recognise and observe the new owner’s rights as a landlord, provided the lease does not have any option or right of election (whether to continue with the lease or not to).

The new owner is therefore responsible for repairs and maintenance that were to be undertaken or completed by the previous landlord. The tenant who was given a written warning to remedy a breach is under legal obligation to do so with the new owner if the cut-off point passes over with the change of ownership to the new owner:

What could be particularly problematic for the new owner is the security deposit that is refunded to the tenant by the previous owner. The new owner becomes responsible for the refund of the security deposit paid by the tenant to the previous owner even though this was not paid to the new owner.

In terms of the provisions of the Rental Housing Act, 50 of 1999, the landlord may require a tenant to pay a deposit before the tenant takes occupation of the dwelling [s5 (3)(c)]

In terms of the “huur gaat voor koop” rule, the lease continues unchanged with the new owner.