

Tenant's right to use and enjoyment of leased premises

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Can a landlord interfere with the tenant's right to use and enjoyment of the dwelling? Is the landlord obliged to protect the tenant from a third party who interferes with the tenant's right to occupation?

When an agreement of lease is concluded between the landlord and tenant, whether in writing or orally, a warranty against interference is understood. This means that the landlord cannot disturb, infringe or restrict the tenant's rights to use and enjoy the dwelling.

If repairs are to be carried out, these must be essential and cannot unnecessarily interfere with the tenant's rights.

It follows that the landlord who disconnects the water or electricity supply or locks out the tenant, breaches the implied warranty against interference.

What is the case with a third party interfering?

If the action is criminal, the landlord is not obliged to prevent this, for example, a burglary or trespassing.

The tenant also has no warranty against expropriation or against a person who does not have a better legal title.

What happens if the tenant was not aware that the landlord did not have the right to lease and the owner (with a better legal title) proceeds with eviction?

The tenant will have a claim against the landlord that includes consequential loss.

However, if the third party, a body corporate for instance, wants to evict a tenant, the landlord who owns the dwelling, through the implied warranty, protects the tenant against such an eviction.

This does not mean that the landlord cannot evict his or her tenant. A landlord can evict the tenant provided the due process of law is followed, such as, cancelling the lease, issuing summons and taking other legal steps.