

Entering a lease deal

What a signature means

A LEASE is a contract between the landlord and the tenant to allow the tenant temporary use and enjoyment of the dwelling. This agreement can be done in writing or parties may orally agree to the terms and conditions of the lease contract.

Whether the lease is in writing or concluded orally, parties have to agree on the rental to be paid in respect of the dwelling let, which dwelling is to be occupied and the period of the lease.

Without a rental agreement there is no lease contract.

As mentioned above, a lease can be oral (verbal) or in writing. However, the landlord must reduce the lease to writing should the tenant request it in terms of section 5 (2) of the Rental Housing Act 50 of 1999.

A lease cannot be changed while it is in use, unless both the landlord and tenant agree to change. The tenant cannot, for example, refuse to pay water charges when the rental agreement was that the tenant would pay a monthly rental of R 500.00 plus additional charges of R 50.00 for water consumption.

Similarly, the landlord cannot force the tenant pay additional charges for water if the rental agreement was that water charges were included in the monthly rental of R 500.00. The landlord cannot, in this instance, introduce separate water meters for the individual account of the tenants without their consent.

What are the requirements of the Rental Housing Act Regarding Leases/

In addition to important information that is a part of a lease contract, the Rental Housing Act requires tenant and landlord to include specific information and imposes certain duties. These cannot be negotiated or left out.

Written and Oral (Verbal) Lease

Inspection: Joint inspection by both parties before the tenant takes occupation and within three days before the tenant moves out.

Receipts: The landlord must give the tenant written receipts for all payments he or she receives from the tenant, including the payment of deposit.

Deposit: The tenant has to pay a deposit if this was agreed between the tenant and landlord. The deposit must be paid before the tenant takes occupation and the landlord has to invest the deposit in an interest bearing account.

Breach: In respect of the tenant moving out of the dwelling before the lease period is over, the lease is deemed to have ended when the landlord realises that the tenant is no longer in occupation.

The landlord can also take legal action against the tenant for breaking the lease i.e. moving out before the lease period ended, or without a proper notice (a calendar month's notice in the case of a month-to-month periodic lease).

Renewal of lease: When a lease for a fixed period expires, the tenant is required to move out. However, a new lease comes into being when the tenant continues to occupy the dwelling, either with the landlord's clear and direct (express) consent, or where the landlord does not object to accepting the rentals while the tenant remains in occupation (tacit acceptance).

Both parties, in this instance, have entered into a periodic lease on the same terms and conditions of the expired lease.

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