

# Follow set legal processes

## Any modification of a lease has to be unambiguous

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IN TERMS of our law, a notice terminating a lease or for a rental increase must be unequivocal, in other words, parties must be clear what is required.

A tenant can reject a notice of a rental increase, which is usually presented as an offer, or the tenant can make a counter offer. A notice cancelling a lease that meets all the legal requirements, once given, cannot be withdrawn.

The tenant may have legal grounds to challenge such a notice, but will not have a legal basis to reject it by ignoring it or make a counter offer.

A tenant given two separate notices, one for rent increase and another to vacate would be confused. It does not make sense to pay an increase and then a month later be expected to

move out of the property. Such notices also pose serious problems for the landlord.

The situation is complicated if the notice of termination also carries with it a threat that services would be disconnected should the tenant refuse to move out at a certain date.

If the notice is a proper one, in that it has complied with the legal requirements; the law must be followed, so that the court will decide whether the landlord had the right to cancel the lease.

Any unlawful action will have serious consequences if the tenant exercises her right to challenge it<sup>1</sup>. Last week's article on spoliation looked at the legal remedies available when someone resorts to self-help measures.

An attorney, as an officer of the court cannot advise his or her client to break the law. In issuing a notice of cancellation of the lease, an attorney cannot state that his or her client will disconnect services or lock out the tenant. It would appear that the attorney is a party to the intended

<sup>1</sup> *Painter v Strauss* 1951 (3) 307 (O); *Naidoo v Moodley* 1982 (4) SA 82 (T); *Froman v Herbmere Timber & Hardware (Pty) Ltd*, 1984 (3) SA 609 (W).

unlawful action and in the event such an action is carried out, then the attorney, if found guilty, may be suspended or prevented from practising.

The following notice which is not valid because of the dates, is an example of an attorney becoming legally liable, or at the very least, a party to an intended unlawful action.

“October 3 2008

Dear Tenant

We act for your landlady under whose instructions we record the following:

1. Your lease is cancelled and you are required to move out by November 3 2008.
2. Our client instructs us that on November 4 she will disconnect electricity and water supply to the premises.
3. Please leave the keys at our offices.

Yours faithfully  
Attorney

A response is necessary to inform the attorney that any unlawful action will be challenged: -

“October 10, 2008

Dear attorney

I refer to your notices of rent increase and notices to vacate, dated September 1, and October 3, respectively.

I wish to record the following: -

1. The notice to vacate is not valid.

2. Disconnecting electricity and water supply would be unlawful.

3. Should there be any disconnection, either through non-payment, instruction to the municipality or any other manner, I will be forced to bring a spoliation application and hold your client and yourselves responsible.

4. The court’s attention will be drawn to the fact that you and your client were notified that the intention to disconnect as per your letter dated October 3, 2008 would be unlawful.

5. Your client will also be held liable for all legal costs and the court will be asked to make a punitive cost order against your client and yourselves and to grant any other appropriate relief for the disconnection.

All my rights are expressly reserved.  
Yours faithfully  
Tenant

Parties are advised to seek legal help and not to take the law into their own hands. Two wrong actions do not render a reasonable and just solution.

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