

More trouble than shortcuts are worth

IT IS wise and legally preferable for parties negotiating a lease contract, to conclude the terms and conditions before the tenant is given the keys to the dwelling. The landlord or his agent would interview the tenant; discuss the dwelling, rental, security deposit and the period of the lease. Parties must inspect the dwelling together and the tenant given an opportunity to decide.

Once deposit is paid or part payment is made towards the leasing of the dwelling, a lease contract (oral or written) is concluded. Should the tenant change his or her mind or does not take possession of the keys, this will not render the contract non-existent. In fact, the tenant is liable for the full lease period.

A landlord who allows a prospective tenant to view the dwelling and then informed by the tenant that he has decided to take occupation or has taken occupation, may prejudice his rights.

If the tenant has taken occupation and the deposit that was agreed was not paid, the landlord would have compromised himself. Section (3) (c) of the Rental Housing Act 50 of 1999 states "the landlord may require a tenant, before moving into the dwelling, to pay a deposit which, at the time, may not exceed an amount equivalent to an amount specified in the agreement or otherwise agreed to between the parties."

Take the case of the landlady who left the keys with a neighbour to the dwelling she advertised for hire. The tenant viewed the dwelling and then without prior discussions with

the landlady, took occupation. The tenant refused to pay the security deposit but offered to pay the rental in advance. The landlady reluctantly agreed and provided the banking details to her account for the rental to be paid. She then demanded the deposit be also paid into her account and the water and electricity account be transferred into the tenant's name.

She presented the tenant with a written lease contract for his signature. Personal details were also required together with a certified copy of the tenant's ID. The tenant did not disclose personal information, was not willing to pay the deposit and refused to sign the lease. An investigation revealed that the tenant abandoned the previous dwelling, without settling his rental arrears and failing to pay the municipal services charges. The previous landlord did not do a credit check and did not request rental receipts as proof of the tenant's payment history.

Simple, obvious facts must not be overlooked and any undertaking should be in writing like the amount of security deposit, rental and period of lease. While parties may agree orally, nothing prevents a party to confirm the terms in writing to avoid disputes.

Entrusting a stranger with one's valuable asset should not be done without taking into account the consequences. The onus rests with the landlord / landlady to establish the *bona fides* of the prospective tenant. After all, the tenant would be given possession of the dwelling; to use and enjoy, and, to have temporary ownership.

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