

Notice reason not needed - Termination of a lease may not be withdrawn, unless agreed to

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A **LANDLORD** terminated an existing residential lease contract because he promised a friend occupation of the dwelling. Subsequently, the landlord's friend changed his mind, leaving the landlord in a quandary. The landlord then decided to inform his tenant that the notice to vacate was withdrawn.

A notice to vacate is a means whereby the landlord notifies a tenant that the lease is cancelled or terminated, and that he or she must vacate the dwelling by a certain day.

Similarly, a tenant intending to vacate the dwelling is required to inform the landlord/landlady of his or her intention to do so. Notice to vacate must be in writing in terms of section 5(5) of the Rental Housing Act, 1999.

A notice to terminate a lease contract, once communicated to the other party, cannot be "withdrawn" except by mutual agreement. This "withdrawal" is in fact a new lease; because once a lease is terminated the contract is cancelled.

The terms and conditions of the previous lease do not apply in this instance. A notice to vacate does not have to be acknowledged by the other party for it to be valid. When a notice to vacate does is given, parties often make arrangements; the tenant has to find alternate accommodation and the landlord/landlady a new tenant.

Sometimes both parties have to endure inconvenience and relocation and advertising costs. Should the tenant reject the "withdrawal" offer, the landlord cannot prevent his tenant from moving out.

Some factors which may cause the landlord to end a lease:

- 1) Termination of a periodic lease
- 2) Late payment of rent;
- 3) Being a nuisance to neighbours;
- 4) Damage to the dwelling;
- 5) Any breach in terms of the agreement.

Some factors which may cause a tenant to end a lease:

- 1) Failure to maintain the premises;
- 2) Failure to allow the tenant free and undisturbed use and occupation of the premises.

Does a landlord/landlady have to give a reason for an eviction?

Until recently, our law seemed to have allowed the landlord/landlady to issue a notice to vacate without giving a reason. A month-to-month tenant, for example, can be evicted on a calendar month's notice, without the landlord having to state or prove any cause or reason. This calendar month's notice ends the tenancy.

In short, the landlord is saying, "this is my property, I want it back. I don't have to explain why-so get out". Though this sounds unjust and ruthless, and may be so in certain instances, it was legal.

However, in terms of the Rental Housing Act, the landlord/landlady can terminate a lease provided:

- (i) he or she has specified in the lease the grounds for terminating a lease; and
- (ii) no unfair practice exists for the termination of the lease.

A calendar month's notice

A calendar month's notice means that a notice must be given not later than the first day of the month, informing the other party of the intention to vacate the dwelling at the end of that month.

Similarly, a weekly periodic lease is ended by giving at least one week's notice; a day-to-day lease requires 24 hours notice.

The notice must be for a whole period, in other words, a notice given on the 22nd of March to end on the 22nd or 23rd April is not for a whole period; it is not a calendar month's notice.

The reference to "a 30-days notice" is confusing and certainly incorrect. A periodic lease is therefore for a period: a day-to-day lease, weekly, monthly or yearly that starts on the first day of the period and runs to the last day, even if rental is paid at the middle of the period.

Dr. Sayed Iqbal Mohamed is the chairperson of the Organisation of Civic Rights; commissioner at the KwaZulu Natal Rental Housing Tribunal and member of the Council of Canadian Administrative Tribunals. www.ocr.org.za For advice, contact Pretty Gumede or Loshni Naidoo on 031 3046451