

# Property Audit now obligatory

## An expired lease may be renewed tacitly

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WHAT are the requirements of the Rental Housing Act 50 of 1999 (RHA) regarding written and oral (verbal) leases?

In addition to important information that is a part of a lease contract, the RHA requires tenant and landlord/landlady to include specific information and imposes certain duties. These cannot be negotiated or left out.<sup>1</sup> Below are a few examples of what is deemed to be part of the lease contract, even if parties failed to include these in the contract.

#### Joint Inspection

Joint inspection by both parties before the tenant takes occupation and within three days prior to the tenant moving out.

#### Difference between viewing and inspection

It is established part of our common law that the premises to be let must be in a condition fit for the purpose for which it is let, and the landlord/ lady must maintain the premises in that condition.

It is common practice that tenants view the premises and thereafter decide to enter into a lease contract. Viewing the premises is not the same as inspecting it for the purpose set out in the RHA, that is, to inspect for *any defect*.

Under common law, it was not a requirement to inspect the premises. The RHA has made this a requirement and is obligatory: Section 5(4) states: The standard provisions referred to in subsection (3) may not be waived by the tenant or landlord. It is the landlord who is required to make sure that the property is handed over to the new tenant without any defect and a joint inspection is to confirm this, or to agree on any defect.

There is obviously a problem with an inspection within three days of vacating, because the tenant may damage the property on the last day if the inspection was carried out on say the penultimate day. In fact, it would appear parties need to meet at about mid-night and the keys handed over to the owner at that time-but it is impractical.

#### Receipts:

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<sup>1</sup> Deemed provisions (Section 5(3))

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

Section 5(3) (b) of the RHA is an amendment and the latter part reads: "Provided that a Tribunal may in exceptional cases, and on application by a landlord, exempt the landlord from providing the information contemplated in this paragraph."

#### 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/lady 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/ lady realises that the tenant is no longer in occupation.

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

#### Tacit Renewal or Relocation 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/ lady does not object to accepting 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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