

Rules for seizure of property

Right exists, but must be finalised

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IT IS frustrating when a tenant fails to pay rental on time, and can be financially disastrous for the "average" landlord when rental arrears are high. Our law, therefore, provides the landlord the right to take possession of the tenant's moveable property.

When can the landlord seize the tenant's goods?

When the tenant falls into arrears and being given an opportunity to remedy the breach (of late payment or non-payment), fails to do so. When the tenant fails to pay rent, he or she is in breach of the terms of the contract. The landlord has the legal right over the tenant's moveable property for the rental owing and this right is referred to as a *tacit hypothec*. The landlord has the right to seize the tenant's moveable but this right, which is implied or unspoken, has to be perfected or finalised. The landlord has to follow certain legal procedures that will allow him to seize the moveable on the dwelling.

What procedure must the landlord follow?

There are two ways given to the landlord by the Magistrates' Courts Act, 32 of 1944.

- i) Section 31 allows the landlord to issue a summons with an automatic rent interdict. This means that the tenant cannot remove his or her goods until the court gives the final order.
- ii) Section 32: the landlord or his agent applies for the tenant's goods to be attached by telling the court on affidavit where the dwelling is, the amount of unpaid rental, that the tenant was given seven days written notice to pay the arrear rental or that such demand was made and that the tenant is about to remove the goods from the dwelling to avoid payment of the rental.

What can the tenant do when his or her goods are seized without a Court Order?

It is important for the landlord to get an attorney or to consult the Clerk of the Court to seize the tenant's goods for rental owing. The tenant must also consult an attorney or the Clerk of the Court to find out what to do.

The tenant can lodge a complaint with the Rental Housing Tribunal if the landlord seized goods unlawfully. Section 4 of the Rental Housing Act, 50 of 1999, under the following subsections, is relevant to tenant and landlord in respect of their rights and responsibilities: -

- (3) The tenant's rights as against the landlord include his or her right not to have-
 - (a) his or her person or home searched;
 - (b) his or her property searched;
 - (c) his or her possessions seized, except in terms of law of general application and having first obtained an order of court; or
 - (d) the privacy of his or her communications infringed.
- (4) The rights set out in subsection (3) apply equally to members of tenant's household and to bona fide visitors of the tenant.
- (5) The landlord's rights against the tenant include his or her right to -
 - (c) prompt and regular payment of a rental or any charges that may be payable in terms of a lease;
 - (d) recover unpaid rental or any other amount that is due and payable after obtaining a ruling by the Tribunal or an order of a court of law;
 - (e) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;
 - (f) on termination of a lease to -
 - (i) receive the rental housing property in a good state of repair, save for fair wear and tear; and
 - (ii) repossess rental housing property having first obtained an order of court; and
 - (g) claim compensation for damage to the rental housing property or any other improvements on the land on which the dwelling is situated, if any, caused by the tenant, a member of the tenant's household or a visitor of the tenant.

In summary then, the tenant is under duty to pay rental regularly, on time and in full. The landlord is allowed to seize the tenant's goods for unpaid rental by following certain legal procedures.

Dr Sayed Iqbal Mohamed; is the chairperson, Organisation of Civic Rights, and a member of both the KwaZulu Natal Rental Housing Tribunal and the Council of Canadian Administrative Tribunals - Website: www.ocr.org.za