

Tenants' rights take precedence

New lease may be negotiated

CHANGE of ownership is often unsettling for a tenant. Is the new owner going to increase the rental? Will he terminate the lease or require a new lease to be signed?

A new lease can have onerous terms and conditions and by itself can compel the tenant to give notice to vacate. Sometimes, the new owner may have a claim that was due to the previous landlord and this right passes over to the new owner. The *huur gaat voor koop* rule in our law operates for the protection of the tenant as well as the new owner.

Simply stated, the new landlord takes over the dwelling with the lease; the tenant's occupation is not affected by the rights and obligations that existed with the previous landlord. When a tenant was informed that the dwelling was to be transferred to a new owner and that she needed to sign a new lease agreement, the tenant agreed to meet the agent. The meeting did not take place and the tenant continued to pay her rental. Six month's later, she received a letter informing her that she was in breach for not paying an increase and an accumulated amount that was allegedly arrears owed to the previous landlord.

The tenant is not obliged to sign a new lease because the new landlord acquires the dwelling with the lease (verbal or written). If there were arrears, these are payable to the new landlord in the same way that the new landlord is responsible for maintenance and repairs that were undertaken by the previous landlord. The *huur gaat voor koop* rule applies.

As for a new lease, the Rental Housing Act 50 of 1999 did not change the common law position. If the lease period was a fixed one, say for two years, and the tenant continued to occupy after the period ended and the (new) landlord tacitly agreed to accept the rental, then a periodic lease comes into place.

A periodic lease is for a period; a day-to-day lease, yearly, monthly or weekly, 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. Section 5(5) states "If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease."

Challenge

Where the landlord alleges cancellation for arrears that do not exist, there is no termination of the lease and the tenant can challenge any legal action that may be taken against her. Should the landlord demand payment of arrears, the tenant must respond that she does not owe the previous landlord and request the landlord to provide proof of the arrears. Copies of correspondence between parties and proof of having served the letters are very important. These documents can be used in the event there is a legal proceedings.

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