

Terminating your lease agreement

Conditions constituting breach

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WHEN a tenant or landlord fails to perform on their contractual obligation, or performs late, the innocent or aggrieved party can cancel for breach.

If the tenant cancels, say for the landlord's failure to maintain the dwelling that placed the onus on the landlord to carry out repairs and maintenance, the lease is cancelled.

The landlord's refusal to acknowledge or accept the cancellation (for breach) does not have an effect on the lease that is terminated.

Similarly, if the landlord cancels the lease for late payment of rental, the tenant's acceptance or rejection of the cancellation is not required for the termination to come into existence.

The lease is cancelled and the relationship between the parties is terminated.

The Rental Housing Act 50 of 1999(RHA), however, requires the tenant to be given a notice of rescission (the tenant must be allowed to remedy the breach) in terms of an oral lease and in a written lease there must be a cancellation clause, the grounds for cancellation must be stipulated and the alleged breach must not constitute an unfair practice, [section 4(5) (j)].

Should the tenant fail to pay after such a notice is given, the landlord can cancel the lease agreement.

A clause stating that the landlord has the right to cancel should the tenant fail to pay his or her municipal charges for the water and electricity consumption on time, affords the landlord the right to cancel.

A tenant may have at least two options when a landlord cancels for breach: the tenant can ignore the cancellation and continue to occupy the dwelling, at enormous risk if he or she is in breach, or accept that he or she has breached the lease contract and vacate the dwelling.

If the tenant is in breach but refuses or fails to vacate, and the landlord follows ejection

proceedings, the tenant would be liable for legal costs and ultimately removed by the sheriff on a writ of execution issued by a court at the landlord's instruction.

Should the tenant intend to challenge the landlord's cancellation and can prove that the breach does not exist; the tenant must hold the landlord to the lease. In other words, the tenant must continue to occupy the dwelling and discharge his or her obligations.

The tenant should notify the landlord that there is no breach.

Take, for example, the case where the landlord alleges that the tenant failed to pay rental on time, on the first day of the month. The landlord cancels the lease because cancellation for late payment is not an unfair practice and the lease contract contains a clause that states that the landlord can cancel for late payment.

The tenant must show proof that the rental was paid on time and if payment was not delayed, the tenant can not lodge a complaint of unfair practice with the provincial Rental Housing Tribunal.

The landlord or tenant does not have to cancel for breach and can opt to continue with the lease, or may choose to invoke the breach at a later stage, depending on the nature of the breach.

It is advisable to seek legal advice when there is no clarity about cancellation for breach, because once the lease is properly cancelled, the contract is terminated.

Should either party decide to continue with the lease after cancellation, there is a new lease (based on the terms and conditions of the lease that was terminated, (refer to section 5(5) of the RHA) because a party cannot withdraw a notice that cancels or terminates a lease.

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