

Avoid abuse of the lease

Full contact details of both parties necessary for communication

LEASING can pose serious challenges to tenants and landlords, especially when the one party behaves criminally or intends to commit fraud.

A prospective tenant desperately eager to secure a lease, or a landlord hoping to find a good tenant, may end up disappointed and duped.

It is usually stressful looking for rental accommodation because of several factors: -

- An acute shortage.
- Negligible new rental stock despite the abolition of rent control a decade ago.
- Finding the 'right' location or environment.
- Identifying a dwelling that is suitable and affordable.
- The size and condition of the dwelling.
- The rental structure.
- The terms of the lease.
- The lease costs.
- The security deposit.
- Advance rental of at least a month.
- Viewing the dwelling.
- Inspecting the dwelling with the landlord or his agent prior to signing the lease.

After taking occupation, certain defects are noticed and this needs to be communicated to the landlord/landlady or agent.

If the agent is mandated to find a tenant, have a lease in place and thereafter tasked to collect rentals only, the tenant may end up frustrated.

In some instances, this signals the beginning of abuse that may include, the disconnection of electricity and water supplies, illegal lockout, disregarding necessary repairs and

eventually the non-refund of security deposits.

Rights, off course, do not exist by itself. Tenants need to be educated of their duties, responsibilities and obligations, and what they need to do in respect of the corresponding rights of landlord.

This also reminds tenants that they are obliged to respect and look after the property they occupy.

There are tenants who violate and abuse the rights of their landlords, for example, they cause damage to the property leased, behave abusively or have no intention of keeping to the agreement.

Take the case of the landlady who left the keys to the dwelling she had advertised with a neighbour.

The tenant viewed the dwelling and, without prior discussions with the landlady, took occupation.

The tenant then refused to pay the security deposit, but offered to pay the rental in advance.

The landlady reluctantly agreed and provided her bank details.

She then demanded the deposit be paid into her account and the water and electricity account be transferred into the tenant's name.

She presented the tenant with a written lease contract for his signature. Personal details were also required together with a certified copy of the tenant's ID.

The tenant did not disclose personal information, was not willing to pay the deposit and refused to sign the lease.

An investigation revealed that the tenant abandoned the previous dwelling, without settling his rental arrears and failing to pay the municipal service charges.

The previous landlord did not do a credit check and did not request rental receipts as proof of the tenant's payment history.

The owner had to pay all municipal service charges since the law holds owners responsible.

It is wise and legally preferable for parties negotiating a lease contract to conclude the terms and conditions before the tenant is given the keys to the dwelling.

The landlord or his agent would interview the tenant; discuss the dwelling, rental, security deposit and the period of the lease.

Parties must inspect the dwelling together and the tenant given an opportunity to decide.

Once deposit is paid or part payment is made towards the leasing of the dwelling, a lease contract (oral or written) is concluded. Should the tenant change his or her mind or does not take possession of the keys, this will not render the contract non-existent. In fact, the tenant is liable for the full lease period.

The flip side is a growing scam to rob prospective tenants who are in desperate need of accommodation.

When a prospective tenant responded to a recent advert, he contacted the landlord on his cell phone, this being the only contact detail. The landlord conducted a brief 'interview' during the telephonic discussion and then advised the prospective tenant to view the dwelling.

He said that he had several keen individuals but was willing to let the dwelling to him if he was willing to deposit a month's rental into his banking account.

They could then meet to formalise the agreement. He emphasised the need to view the dwelling first and, if satisfied, to proceed with depositing the money into his account.

The prospective tenant met a security guard who handed the keys to the dwelling for 'inspection' or viewing.

The monthly rental seemed reasonable for a well maintained dwelling and the location and environment were 'perfect'.

The tenant then proceeded with the bank transaction to secure his right to the lease and later contacted the landlord to sign the lease. The landlord did not respond to his calls and messages.

He went back to the dwelling where he met a person who had also paid into the 'landlord's bank account and was unable to get hold of him.

As it turned out, several other persons were defrauded by a person whose cell phone number in the advert was the only detail they responded to.

It is necessary to have all the details of the owner-landlord and agent before concluding a lease.

Section 5(6) of the Rental Housing Act 50 of 1999 states "A lease contemplated in subsection (2) must include the following information:

- (a) The names of the tenant and the landlord and their addresses in the Republic for purposes of formal communication;"

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