

BINDING DUTIES ARISE FROM LEASE

Signatories also both get rights

A TENANT rents a property for his or her quiet and undisturbed use and enjoyment. It is therefore the landlord's duty to fulfil this right during the lease period.

How does landlord disturb or interfere?

- (i) Preventing a tenant access to his or her dwelling by barring entry;
- (ii) preventing him or her from occupying the dwelling or part of it;
- (iii) cutting off water or electricity, or putting up barriers that interfere with the tenant's ease of entry or exit to his or her dwelling;
- (iv) refusing to attend to specific problems: e.g. leaking roof, faulty electrical wiring, and plumbing.
- (v) carrying out repairs which are not necessary or which can be done after the lease expires;
- (vi) entering the dwelling without the tenant's consent.

What are the tenant's remedies?

- (a) Tenant may demand that the landlord put the dwelling into the condition required by contract.
- (b) Seek a proportionate reduction of rent while remaining in occupation.
- (c) Cancel the contract and sue for breach.
- (d) Take the matter to court to prevent the landlord from continuing the interference.
- (e) Restrain the landlord by an interdict if he or she enters without permission, because this is trespassing.
- (f) File a complaint with the Rental Housing Tribunal in terms of section 4(2) and (3) or as an unfair practice in terms of the Rental Housing Act 50 of 1999.

The landlord cannot enter the tenant's dwelling unless arrangement is made with the tenant (mutually agreed between the parties).

A landlord who enters the tenant's dwelling without permission may be guilty of a criminal trespass. The landlord would be like a stranger should he or she enter the dwelling without permission or prior arrangement.

What to do?

- The tenant may report the incident to the police. The police have the power to remove the lock from the door if the landlord fails to do so immediately.

- If the police are not helpful, the tenant should seek legal assistance: an attorney can obtain an urgent court order putting the tenant back into the dwelling.
- The tenant can file a complaint with the Rental Housing Tribunal for violating his or her rights.

Landlord's Rights

A landlord or landlady must maintain the premises, therefore the law grants him or her reasonable rights to enter the dwelling to inspect it.

Such inspection must be carried out at a time that suits the tenant (section 4[2]).

However, the tenant must not be “difficult” or unreasonable in agreeing to a time that suits both parties.

The following are grounds upon which a landlord may request permission to enter the dwelling:-

- (a) to inspect the dwelling for necessary reasons, such as damages;
- (b) to make repairs to the dwelling;
- (c) to show the dwelling to a prospective tenant, purchaser, mortgagee or its agents;
- (d) to inspect the dwelling for damages as contemplated in the Act (5[2]), or upon notification by the landlord or the tenant of the intention to terminate the lease;
- (e) pursuant to a court order.

Tenant's Duty

It is therefore necessary for a tenant to conduct himself or herself in a manner that will not bring him or her into conflict with the law or the landlord.

The landlord can also lodge a complaint of unfair practice with the Rental Housing Tribunal in terms of section 15 that includes nuisance, over-crowding and damage to property.

As, for example, when the tenant creates a disturbance by making a noise; plays music loudly; or is abusive towards the supervisor or other tenants. Or brings in things which would cause damage to the premises, e.g. explosives, smelly goods and the like.

If the tenant causes such a problem, the landlord/lady too can lodge a complaint with the Tribunal, approach a court to obtain a court order to stop the problem, cancel the lease by considering the nuisance a breach, and sue for damages.

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