

DEFINING TERMS FOR A LEASE DEAL

Period must be specified for legal validity

A LEASE¹ is a contract between the landlord/landlady, or duly authorised agent, and the tenant to allow the tenant temporary use and enjoyment of a dwelling.

This agreement can be done:-

- in writing; or
- parties may orally agree to the terms and conditions of the lease contract;
- it could also be partly oral².

Whether the lease is in writing, concluded orally or partly written and partly oral, parties have to agree:-

- on the rental to be paid in respect of the dwelling let;
- which dwelling is to be occupied; and
- the period of the lease.

¹ Section 5 of the Rental Housing Act 50 of 1999: provisions pertaining to leases.

² ATM Solutions (PTY) Ltd v Olkru Handelaars CC 2008(2) SA 345 (C).

To put it another way, there is **no lease**:-

- when there is no agreement regarding the exact amount of money to be paid as rental;
- if parties fail to confirm the dwelling the tenant is to occupy for her of his use and enjoyment³; and
- if the lease period is undecided⁴.

As mentioned above, a lease can be oral (verbal) or in writing, or a combination of both.

Should the tenant request a written lease, the landlord/ lady must reduce the lease to writing, but on the same terms and conditions as the oral lease (section 5(2) of the Rental Housing Act 50 of 1999 (RHA)).

³ Refer to Total South Africa (Pty) Ltd v Bonaiti Developments (Pty) Ltd; Total South Africa H (Pty) Ltd v Valdave Investments (Pty) Ltd; Total South Africa (Pty) Ltd v Dave White Holdings (Pty) Ltd; Total South Africa (Pty) Ltd v Dave White Investments (Pty) Ltd 1981 (2) SA 263 (D); Bekker v RSA Factors 1983 (4) SA 568 (T); Southernport Developments (Pty) Ltd v Transnet Ltd 2005 (2) SA 202 (SCA); Benlou Properties (Pty) Ltd v Vector Graphics (Pty) Ltd 1993 (1) SA 179 (A) and Jordaan NO v Verwey 2002 (1) SA 643 (E).

⁴ "The contract of hire cannot be concluded except for a definite time ..." (Grotius, 3:5:8; trans by Lee 1926:387).

The RHA does not give the same right to the landlord, so that a request to the tenant to reduce to writing the oral lease can be ignored since this would not be an unfair practice.

The dwelling/ leased premises must be agreed upon and rental fixed for the tenant's use and enjoyment of the dwelling. A third party (e.g. an arbitrator) can be nominated to determine the rental.

Periodic lease

What is a "periodic lease"?

The RHA defines a "periodic lease as "a lease for an undetermined period, subject to notice of termination by either party".

According to South African common law, a lease period is definite: (daily, weekly, monthly, yearly (periodic leases), or for a specified fixed period, such as 6 months, 1 year or 15 years.

There is also reference in judgments to an "indefinite" lease as part of our law⁵, although what is intended is that the lease is not a fixed lease, but one that subsists on a periodic basis.

According to Erasmus J, "a lease for an indefinite period is not known in our law"⁶

In the Timber Rooftech case Tebbutt JA said: [t]he ordinary meaning of the word 'indefinitely'

⁵ Joosub Ltd v Ismail 1953 (2) SA 461 (A); Ebrahim v Pretoria Stadsradd 1980 (4) SA 10(T); Khosis Community Lohatla, and Others v Minister of Defence and Others 2004(5) SA 494 (sac); Scopeful 130 (Pty) Ltd 2008 (3) SA 483 (W).

⁶ Davids and Others v Van Straaten and Others 2005 (4) SA 468 (C)

is, according to the Shorter Oxford Dictionary, 'for an indefinite period' and 'in-definite' in turn, is defined as 'of undetermined extent''⁷.

We can conclude that a lease cannot be for an undetermined or indefinite period.

We may therefore define a periodic lease as a lease that is for a definite period whereby the parties decide, either expressly or implicitly through their conduct, that the period would be daily, weekly, monthly or a yearly lease.

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⁷ Timber Rooftech CC v Mendel Welding and Engineering (Pty) Ltd and Another, 1997 BWCA 30; also Lace v Chantler 1944 KB 368.