

DUTIES AND RIGHTS UNDER LEASE

Contract may be oral or written

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A TENANT enters into a lease agreement (oral or written) in return for the full use and enjoyment of the dwelling. Parties agree to the dwelling, the rental amount and the payment date.

The rental is due in full, on time and must be paid regularly in terms of section 4(5) of the Rental Housing Act, 50 of 1999 as amended (the RHA). In terms of our law, the dwelling leased must be in a condition fit for the purpose for which it is let.

It is therefore the landlord's duty to ensure that the tenant has quiet and undisturbed use and enjoyment during the lease period. This includes maintenance and repairs to the dwelling so that it is kept in a 'habitable' condition.

How does the landlord disturb or interfere?

1. Preventing a tenant access to his or her dwelling by barring entry,
2. Preventing him or her from occupying the dwelling or part of it,
3. Cutting off water or electricity supply or putting up barriers that interfere with the tenant's ease of entry or exit to his or her dwelling,
4. Refusing to attend to specific problems (e.g. leaking roof, faulty electrical wiring, and plumbing.)
5. Carrying out repairs which are not necessary or which can be done after the lease expires; and
6. Entering the dwelling without the tenant's consent

What are the tenant's remedies?

1. A tenant may demand that the landlord put the dwelling into the condition required by contract.
2. Make a proportionate reduction of rent while remaining in occupation.
3. Cancel the contract and sue for breach.
4. Take the matter to court to prevent the landlord from continuing the interference.
5. Restrain the landlord by an interdict if he or she enters without permission because this is trespassing.

6. File a complaint with the Rental Housing Tribunal in terms of section 4(2) and section 4(3) of the Rental Housing Act, 50 of 1999, as an unfair practice.

The landlord cannot enter the tenant's dwelling unless arrangement is made with the tenant. 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.

There were several recent incidents of landlords removing the front doors, windows and even the roofs to force tenants out of their dwellings.

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.

The Landlord's Rights

A landlord must maintain the premises; therefore the law grants him or her reasonable rights to enter his or her property in order to inspect it. But, 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 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, overcrowding, damage to property.

Examples are: The tenant creates a disturbance by making a noise, playing music loudly; bring in things, which would cause damage to the premises (e.g. explosives, smelly goods and the like.)

Remember: If the tenant causes such a problem, the landlord too can obtain a court order to stop the problem, regard it as a breach of the lease and cancel it, can sue for damages.

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