

# Evicting the tenants

## Where do you stand legally?

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EVICCTIONS must be handled with care. Here are some of the questions property owners need to consider.

### **Can a landlord / landlady or his or her agent evict a tenant without legal process?**

No! The landlord / landlady cannot take the law into his or her own hands. It is illegal for a landlord / landlady to evict a tenant, except with an order from court.

Even if a proper notice has been given but the tenant remains in occupation, the landlord / landlady cannot "throw" him or her out. The landlord / landlady must issue a summons and obtain a judgment for eviction or bring an application before the High Court (supreme court). Only the sheriff may evict a person under a properly issued Warrant of Ejectment.

### **What about an agreement that allows for an illegal eviction?**

A written lease contract contains a clause that stipulates the landlord / landlady has the right to remove the tenant from the dwelling without a court order in the event the tenant is in breach.

The clause specifies that failure to pay rent will allow the landlord / landlady to lock out the tenant or seize his / her moveable property without a court order and a subsequent late payment will entitle the landlord / landlady to eject the tenant without a legal process. The tenant agrees to all the terms of the contract, including vesting the landlord / landlady with the powers to take the law into his own hands under specific circumstances.

The tenant's signature on the lease contract does not make this term of the contract enforceable. The courts and the Rental Housing Tribunal (RHT) will not allow parties to a lease contract to defeat or circumvent for unlawful purpose the common law, the provision of the Constitution, the Rental Housing Act (RHA) and any other relevant law.

"No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions."<sup>1</sup>

"And whereas no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances;"<sup>2</sup>  
"his or her possessions seized, except in terms of law of general application and having first obtained an order of court"<sup>3</sup>

### **What can the tenant do if evicted illegally?**

An aggrieved tenant can take legal action and can claim legal costs from the landlord / landlady. Legal action can include asking the court or RHT to allow the tenant to move into the dwelling. Our law does not allow a landlord / landlady or his or her agent to remove a tenant by means of physical force or by preventing access to the dwelling.

### **What can a landlord / landlady do if the tenant refuses to move out?**

The landlord / landlady is also protected by law when the tenant ignores a notice to vacate or refuses to move out. If a tenant has agreed, in terms of his lease agreement, to move out on or before the last day of December, the landlord / landlady does not have to remind the tenant that he or she must vacate the dwelling. Should the tenant fail to move out, the landlord / landlady may approach the courts to have the tenant evicted.

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[www.ocr.org.za](http://www.ocr.org.za)

For tenant's rights' advice, contact Pretty Gumedede or Loshni Naidoo at 031 304 6451

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<sup>1</sup> s 26 (3), Chapter 2 of the Bill of Rights in the Constitution of the Republic of South Africa, 108 of 1996

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<sup>2</sup> Preamble to the RHA

<sup>3</sup> s 4 (3) (c) of the RHA