

IMPORTANT INFORMATION IN THE LEASE

WHAT are the requirements of the RHA regarding leases? In addition to important information, that is part of a lease contract, the Rental Housing Act 50 of 1999 as amended (RHA) requires tenant and landlord to include specific information and imposes certain duties. These cannot be negotiated or left out¹. Below, a few examples of what is deemed to be part of the lease contract even if parties failed to include these in the contract: -

Written and Oral (Verbal) Lease Joint Inspection

Joint inspection by both parties before the tenant takes occupation and within three days before the tenant moves out.

Difference between viewing and inspection

It is common that tenants view the premises and thereafter decide to enter into a lease contract. Viewing the premises is not the same as inspecting it for the purpose set out

in the RHA, that is, to inspect for any defect.

Under common law, it was not a requirement to inspect the premises². The RHA has made this a requirement and is obligatory: Section 5(4) states: The standard provisions referred to in subsection (3) may not be waived by the tenant or the landlord.

Joint inspection is therefore necessary at the commencement of the lease and towards the end of the lease period.

It is the landlord who is required to make sure that the property is handed over to the new tenant without any defect and a joint inspection is to confirm this or to agree on any defect that needs repaired.

There is obviously a problem with an inspection within three days of vacating because an unscrupulous tenant may damage the property on the last day if the inspection was carried out on say the penultimate day. In fact, it would appear that

¹ Deemed provisions (section 5(3)).

² *Salmon v Dedlow* 1912 TPD 971.

parties need to meet at about midnight and keys handed over to the owner at that time. This is impractical.

Receipts:

The landlord must give the tenant written receipts for all payments he or she receives from the tenant, including the payment of deposit. Section 5(3) (b) of the RHA is an amendment and the latter part reads:

“Provided that a Tribunal may in exceptional cases, and on application by a landlord, exempt the landlord from providing the information contemplated in this paragraph.” The landlord will have to get a ruling from the RHT granting an exemption.

Deposit:

The tenant has to pay a deposit if this was agreed between the tenant and landlord. The deposit must be paid before the tenant takes occupation and the landlord has to invest the deposit in an interest bearing account.

Breach:

In respect of the tenant moving out of the dwelling before the lease period is over, the lease is deemed to have ended when the landlord realises that the tenant has left the dwelling.

The landlord can also take legal action against the tenant for breaking the lease, i.e. moving out before the lease period ended or without a proper notice (a calendar month's

notice in the case of a month-to-month periodic lease).

Tacit Renewal or Relocation of lease³:

When a lease for a fixed period expires, the tenant is required to move out.

However, a new lease comes into being when the tenant continues to occupy the dwelling, either with the landlord's clear and direct (express) consent or where the landlord not object to accepting the rentals while the tenant remains in occupation (tacit acceptance).

Both parties, in this instance, have entered into a periodic lease on the same terms and conditions of the expired lease.

³ *Pareto Ltd and others v Mythos Leather Manufacturing (Pty) Ltd t/a Venucci* 2000 (3) All SA 286 (W).