

Law covers all aspects

Signing means
undertaking to pay the
rent for the lease
period

Q: PREMATURE termination of rental agreement

I concluded a six-month lease agreement, paid a month's rental in advance, lease fees and a security deposit.

My circumstances changed a week before taking occupation due to a job offer in another province. I am forced to cancel the lease agreement.

I am willing to forfeit the lease fees but am I entitled to get my full advance rental and deposit from my landlord?

Answer: No. You are responsible for the rental for the full or remaining lease period, or, up to the time of a replacement tenant. The landlord has a legal claim for the rentals for six months.

However, if your landlord finds a replacement tenant, say two weeks into the first month, he has to refund the full deposit and two weeks rental because his claim was reduced by two weeks. He will also have to abandon any claim for future rentals.

While your circumstances have changed and therefore compelled to abandon the lease, this does not change the legal position that you are breaking (breaching) your contract.

Q: Who is responsible for maintenance?

I moved into a property that was not maintained during the two years of my verbal lease.

The flat was not painted when I took occupation and while my landlord and his agent promised to clean the carpets, this was never done.

Now that I have moved out, the landlord is holding me responsible for the cost of cleaning the carpets and for painting the flat.

My deposit of R5000.00, which was equivalent two month's rental, is being withheld. Am I responsible for repainting the flat and for the cleaning costs for the carpets?

Answer

The landlord's duties are:

1. To hand over the dwelling in a reasonable condition ("a good state of repair"; "fit for the purpose for which it is let") that would allow you undisturbed use and enjoyment.
2. To maintain the property both internally and externally at all times.
3. You are not obliged to clean the carpet.
4. The flat must be returned in the condition you received it. If it was not painted, then you are not obliged to do so.

Q: What are the legal requirements?

Do both parties have to sign the contract simultaneously?

Must every page be signed?

Answer

1. There is no legal requirement that both parties have to sign at the same time.
2. The usual practice is to initial each page, although this is not a requirement.
3. Initialling each page can prevent a dispute or assist in clarifying any misunderstanding.
4. All alterations or changes must be initialled by both parties to avoid a dispute.

Q: Failure to pay rent

My tenant pays her rent late and now she has failed to pay for three months. I have accommodated her in the past but this time she informs me that she was retrenched and will try to pay the arrears.

This has placed me in a difficult financial situation. How do I go about recovering the outstanding rent and how do I evict her from the property?

Answer:

1. The tenant is in breach and as the landlord you can take legal action against her for breaking the contract (section 5(3) (o) of the Rental Housing Act 50 of 1999).
2. You have a legal right to attach her personal belongings for the arrears
3. Our courts have accepted a cancellation with immediate effect for breach, provided you placed your tenant on terms to rectify the breach.
4. You can then cancel the lease for breach and expect the tenant to move out. Should she fail to give vacant occupation immediately or within 24 hours as stated in some leases, you will then have to follow the legal procedure. Issuing summons starts the court process.
5. Unfortunately, you will need an attorney for a magistrate's court action. This can be quite costly.

Q: Interest on security deposit

I have moved out of a residential property after my lease expired. My landlord and I carried out an inspection together and it was settled that the property was in a good condition. I was subsequently informed that my deposit will not be refunded because we had an oral lease.

Answer

In fact, the refund is non-negotiable. In terms of section 3 of the Rental Housing Act 50 of 1999 under which deposit is discussed a lease is deemed to include certain terms, enforceable in a competent court.

Section 5(3) (d) reads:

“the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must subject to paragraph (g) pay the tenant such interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with that financial institution, and the tenant may during the period of the lease request the landlord to provide him or her with written proof in respect of interest accrued on such deposit, and the landlord must provide such proof on request.”

This confirms the common law position of holding the landlord / landlady responsible for the refund of the deposit to tenant. It would appear that irrespective of who holds the deposit, the landlord / landlady must refund it with accrued interest at the end of the lease period when the tenant has vacated the dwelling.

Section 5(3) (g), (i), (j), (l) and (m) deals with the refund of the deposit with accrued interest under different circumstances of the lease coming to an end.

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