

Lease terms inviolable

A tenant's right to common courtesy protected under the law

WHEN a tenant rents a property (a dwelling or a business premises), she or he is entitled to undisturbed use and enjoyment. It may become unavoidable for the landlord or landlady to carry out an inspection to assess the extent of repairs that need to be undertaken. Often, the supervisor or another representative is mandated or instructed to do the necessary inspection.

There are instances when the supervisor or the owner him/ herself / believes that no prior arrangement is required with the tenant to enter the dwelling or premises. Our law allows for inspection for necessary repairs, but the time must be mutually agreed.

What if the landlord intends to sell the dwelling and would require prospective buyers to 'inspect' the dwelling?

Should the landlord want access for show days, then there has to be compensation by way of a rental reduction and an undertaking that any loss to the tenant's personal property will be made good.

The common law, which was not changed by the Rental Housing Act, guarantees a tenant the undisturbed use and enjoyment. The tenant is placed in the position of a lawful owner for duration of the lease.

The landlord cannot enter the tenant's dwelling or premises unless arrangement is made with the tenant. A landlord who enters the tenant's dwelling or premises 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.

The tenant is given possession of the dwelling through an oral or written lease; to use and enjoy, and, to have temporary ownership. In reality, the owner or landlord/ lady grants the tenant the following:-

- guarantees physical control over the property (*detentio*) with all its accessories
- unhindered possession of the property (*vacua possessio*)
- undisturbed use and enjoyment of the property (*commodus usus*)

Let us look at a situation which explains the rights and responsibilities of parties and the consequences for violating the tenant's right to privacy and undisturbed use and enjoyment.

The Soffiantini v Mould case

A tenant in East London was granted an interdict, preventing the landlord from disturbing his peaceful use and enjoyment of the premises.

The landlord had on five occasions entered the tenant's premises without his permission. The landlord refused to leave when asked to do so by his tenant. He also instructed the municipality to disconnect electricity supply to the lift.

Upset at the interdict, the landlord (appellant) appealed against the order granted to the tenant (lessee / respondent).

The matter came before three judges in the Eastern Districts Local Division and judgement given in August 1956.

The case is referred to as *Soffiantini v Mould* 1956 (4) SA 150 (E).

The following paragraphs from this judgment confirm the tenant's legal right guaranteed by law: to have physical control, unrestricted possession of the property and peaceful use and enjoyment of the property.

"The landlord is not entitled to enter the leased premises without the consent of the tenant. Pothier, para. 76 and 80. If he does he is thereby constituted a trespasser. Halsbury, vol. 20, para. 243. The lessee is, in such a case, entitled to protect his rights by means of an interdict."

"I propose to deal with the issues of fact, firstly by isolating the facts admitted or not denied by the appellant, and then by considering the allegations that are denied.

"As already stated, the appellant admits that he entered the leased premises on all the dates mentioned. He does not say that he had any permission to do so. Therefore his admission is that he entered without permission. He says that he passed through the premises on his way to and from a lavatory where he was having plumbing operations done.

"The fact that he might have a reasonable purpose in entering the leased premises does not entitle him to do so without permission. It would be a sorry state of affairs if landlords could enter premises leased to tenants at will if they wished to do so, whatever the purpose of the visit.

"It cannot be contended that a landlord has the right to open the door of leased premises and walk in. In the ordinary course he would knock at the door, explain the purpose of his visit and ask for permission to enter, and would not do so without permission. This is not only ordinary courtesy, it is also good law.

"The appellant does not undertake not to repeat his trespass, but his whole attitude is the reverse. His state of mind is revealed by the wording of his summons. He claims damages for, inter alia, the respondent's "arrogance and prevention of landlord's rightful access to premises."

"In para. 3 of his affidavit he states that he entered the leased premises in his capacity as landlord, as if this gives him a right to enter the premises at will. This allegation, taken together with the wording of his summons, indicates that the appellant is apparently asserting a right to enter the premises without the respondent's consent, for he does not allege any refusal on the part of the respondent to any reasonable request for permission to enter the premises.

His 'rightful access' to the premises means, therefore, his access without permission. This is the way the appellant understands his rights as landlord. I am satisfied that BACK, A.J., was fully justified (on the merits of the case) in giving the judgment which he gave simply on the admissions of the appellant."

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