Limits of an oral lease agreement

Once main points settled, court rule is valid

Daily News Tuesday December 8 2009

IS AN ORAL lease agreement binding? There appears to be a growing trend to disregard existing oral agreements, or to have written agreements imposed on existing tenants or to unilaterally change the terms of the oral agreement.

There are various reasons, some "justified", some with ulterior motives and some out of ignorance of the law.

In some instances, legal practitioners believe that a verbal (oral) lease is an "informal" one and must be in writing to be valid.

There is nothing informal about an oral agreement.

Our common law considers an oral lease as important as a written lease for urban tenancies, which contains the practice of Roman law that came down to us through Roman-Dutch law on this point.

Old and modern writers or authorities on law hold different views but our courts have settled this matter through various cases over the years.

Consensus or mutual agreement or the meeting of the minds is crucial when contracting.

In respect of a lease, parties must agree on the following; these are essential for a lease to come into existence.

- the rental to be paid in respect of the dwelling let
- which dwelling is to be occupied and
- the period of the lease.

"The contract of letting and hiring stands in a very close relation to purchase and sale. By this is understood the transaction by which the one party binds himself to let the other have the use of a certain thing for a fixed time in consideration of a certain rent which the other binds himself to pay him," (van der Linden in De Jager v Sisana 1930 AD 71).

Our courts have held that an oral lease is valid and binding once parties have agreed on the fundamental points.

In Woods v Walters, 1921 AD 303, Innes, the chief justice in this case stated:

> "The broad rule is that writing is not essential to the validity of a contract; the *consensus* of parties need not be so evidenced."

This common law rule is confirmed in the Rental Housing Act 50 of 1999 where parties could either conclude a written or an oral lease agreement.

In terms of section 5: Provisions pertaining to leases,

> (1) A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 of 1969)
>
> (2) A landlord, must if requested thereto by a tenant, reduce the lease to writing.

Sometimes, a party may decide to have the oral agreement recorded for convenience. This is helpful when a dispute arises.

In this instance, failure to record the terms and conditions of the oral lease does not render the agreement invalid.

This is different from the situation where the parties have orally agreed that there will be no lease contract unless the terms and conditions are in writing.

Writing is then the basis of an agreement, without which there is no lease contract. This was explained in Goldblatt *v* Fremantle (1920, A.D) which like the Woods' case above, have been referred to by our courts regarding lease and sale contracts.

"Thus, they may agree that there will be no binding transaction between them until the agreed terms have been set out in a written document signed by both of them. Until this has been done, the contract has no legal effect," in Shaik and others v Pillay and others, [2008] 2 All SA 465 (N).

The court had to deal with a dispute in respect of a sale agreement. The main problem was whether parties had intended that the agreement would be binding once both the seller and buyer had signed.

In this case, evidence showed that it was agreed that unless parties signed, the agreement would not be valid.

Dr. Sayed Iqbal Mohamed, *chairperson, Organisation of Civic Rights* Website: www.ocr.org.za For advice, contact Pretty Gumede or Loshni Naidoo on 031 3046451