

Pay up, or lose property

Landlords can seize your furniture, cash if you default on rent

A LANDLORD has a real right to the tenant's goods that are in his dwelling (*Webster v Ellison* 1911 AD 73), including the tenant's money (Kahn & Lotz (1998)).

The Rental Housing Act 50 of 1999 as amended (RHA) recognises this common law right of the landlord over the tenant-debtor's personal property.

The landlord has the right to seize the tenant's moveables, but this right, which is implied or unspoken, has to be perfected. In other words, the landlord has to follow certain legal procedures.

The landlord / landlady entrusts his or her dwelling to the tenant for temporary use and enjoyment of the property in return for rental agreed upon. The tenant's duty is to pay rental and the landlord / landlady's right is to receive prompt and regular payment of rental.

What is a tacit hypothec?

The landlord / landlady's lien or hypothec means the law gives the landlord / landlady a powerful weapon against a tenant who is in arrears.

The landlord / landlady has a real right to the tenant's goods that are in the landlord / landlady's dwelling (*Webster v Ellison* 1911 AD 73), including the tenant's money (Kahn & Lotz (1998)).

When can the landlord / landlady seize the tenant's goods?

- When the tenant fails to pay rent, he or she is in breach of the terms of the contract. The landlord / landlady has the legal right over the tenant's moveable property for the rental owing and this right is referred to as a tacit hypothec.
- When the tenant falls into arrears and being given an opportunity to remedy the breach (of late payment or non-payment), fails to do so.
- The landlord / landlady has to follow certain legal procedures that will allow him / her to seize the moveable on the dwelling through a sheriff.

The procedure to be followed is either through the Magistrates' Courts or the Rental Housing Tribunal (RHT).

Magistrates' Court: In terms of the Magistrates' Courts Act, 32 of 1944, the landlord can use: -

- i) Section 31 application whereby a summons with an automatic rent interdict is issued. A rent interdict

prevents the tenant from removing her or his personal belongings over which the landlord has a right for unpaid rentals.

- ii) Section 32 allows for the tenant's goods to be attached by the landlord depositing to an affidavit. The information in the affidavit must include:-
- the address of the dwelling
 - the amount of unpaid rental
 - tenant was given seven days written notice to pay the arrear rental, or
 - that such demand was made and that the tenant is about to remove the goods from the dwelling to avoid payment of the rental.

An attachment order allows the tenant's goods to be identified by the sheriff and listed on an inventory, pending the court's final order. The goods may be removed and stored by the landlord or remains in the dwelling.

Rental Housing Tribunal: The landlord can lodge a complaint for unpaid rentals and seek an attachment order through the RHT

in terms of section 13 (12) (c) of the RHA.

What can the tenant do when his or her goods are seized without a court order?

It is important for the landlord / landlady to get an attorney or to consult the Clerk of the Court to seize the tenant's goods for rental owing.

The tenant whose property is seized must also consult an attorney or the Clerk of the Court to find out what to do. The tenant can lodge a complaint with the RHT if the landlord / landlady seized goods unlawfully.

The tenant may lodge a complaint of unfair practice (section 4 (3) (c)) with the RHT because the landlord / landlady cannot seize goods unlawfully, and in terms of section 13 (12)(c), seek appropriate relief.

The RHT however, do not have the necessary regulations to perform this or any other function required in terms of the RHA.

In summary then, the tenant is under duty to pay rental regularly, on time and in full. The landlord / landlady is allowed to seize the tenant's goods for unpaid rental by following certain legal procedures.

Dr. Sayed Iqbal Mohamed, Chairperson, Organisation of Civic Rights; For tenant's rights' advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451