

# Proof necessary for rental claim

## Specific entities have legal right to collect

**Should the owners / agents refuse to accept rental, the tenant's remedies include:-**

- Post a cheque or postal order by registered mail, or
- Instruct an attorney to pay the rent; or
- Approach a community based, legal or paralegal body to pay the rental on his or her behalf.

The tenant must ensure that the attorney or any organisation acting for him or her issues a receipt.

However, should a third party (own attorney or organisation) to whom rental is paid ceases to exist or misuses the rental, the tenant is ultimately responsible for the payment of rental to the landlord / landlady.

**When is rental paid to a third party, that is, someone other than the landlord/ landlady?**

If a tenant fails to pay the rental to the landlord / landlady or his / her duly appointed agent, the tenant is in breach that could lead to the cancellation of the

lease, recovery of the rental not paid and eventually the tenant can be evicted.

There are certain instances when the law allows a third party, someone who is not a party to a lease, the legal right to collect rentals from a tenant.

The following are a few examples when the law gives the legal right or authority over the rental to another party, that is, not the landlord / landlady or his / her duly appointed agent: -

- The municipality.  
An owner of a sectional title unit who failed to pay rates may lose the right to his or her rental when the municipality decides to recover the rates through the tenant's rental. The Local Government Municipal Property Rates Act 6 of 2004 gives a municipality the legal right to collect the rentals from a tenant whose landlord / landlady as the owner of the dwelling, owes the

municipality rates. The municipality must show the tenant proof that it has the legal right to the rental.

- The Bank.  
The bank with whom the dwelling is mortgaged<sup>1</sup> can collect rentals from the tenant whose landlord / landlady as the owner, defaulted on bond repayments.

However, the bank must first obtain a court order against the owner and authorisation from the court to do this.

- A new owner.  
Tenant is obliged to pay rentals to the new owner who takes over the dwelling (acquires ownership rights) from the previous owner-landlord<sup>2</sup>.
- A new owner who has acquired the right to collect rentals owed to the previous owner<sup>3</sup>

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<sup>1</sup> *Absa Bank Ltd v Bisnath NO and Others* 2007 (2) SA 583 (D)

<sup>2</sup> *Mignoel Properties (Pty) Ltd v Kneebone* 1989 (4) SA 1042 (A).

<sup>3</sup> *Rishworth v Secretary for Inland Revenue* 1964 (4) SA 493 (A); *Thekweni Properties (Pty) Ltd v Picardi Hotels Ltd (And Others As Third Parties)* 2008 (2) SA 156 (D).

(through cession, that is, given the right by another; when right is transferred to another).

- Cession of rentals involving tenant, subtenant and a creditor whereby the subtenant is required to pay rental to the creditor and later required to pay to a third party chosen by the creditor<sup>4</sup>.

The tenant has the right to a copy of a written document from a third party who claims the right to rental.

It is important to consult an attorney when a third party demands rental and to present the attorney with the third party's document.

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<sup>4</sup> *Estate Frankel and Others v Estate Fitzpatrick; Estate Frankel and Others v Denoon and Another* 1943 AD 207.