

SPECIFIC PROVISIONS ALWAYS PART OF A LEASE

Aspects deemed by law to be included even if not written down

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WHAT ARE the requirements of the RHA regarding leases?

In addition to important information that is a part of a lease contract, the Rental Housing Act 50 of 1999 as amended (RHA), requires tenant and landlord / landlady to include specific information and imposes certain duties.

These cannot be negotiated or left out¹.

Below, a few examples of what is deemed to be part of the lease contract, even if parties failed to include these in the contract: -

Written & Oral (Verbal) Lease Joint Inspection

A joint inspection must be undertaken by both parties before the tenant takes occupation and within three days before the tenant moves out of the property.

Difference between viewing and inspection

It is common practice that tenants view the premises and thereafter

decide to enter into a lease contract.

Viewing the premises is not the same as inspecting it for the purpose set out in the RHA, that is, to inspect for any defect.

Under common law, it was not a requirement to inspect the premises².

However, the RHA has now made this a requirement and is obligatory: Section 5(4) states: The standard provisions referred to in subsection (3) may not be waived by the tenant or the landlord.

Joint inspection is therefore necessary at the commencement of the lease and towards the end of the lease period.

It is the landlord / lady who is required to make sure that the property is handed over to the new tenant without any defect, and a joint inspection is to confirm this or to agree on any defect that needs repaired.

¹ Deemed provisions (section 5(3)).

² *Salmon v Dedlow* 1912 TPD 971.

There is obviously a problem with an inspection within three days of vacating because an unscrupulous tenant may damage the property on the last day if the inspection was carried out on say the penultimate day.

In fact, it would appear that parties need to meet at about midnight and keys handed over to the owner at that time. This is impractical.

Receipts:

The landlord / lady must give the tenant written receipts for all payments he or she receives from the tenant, including the payment of deposit.

Section 5(3) (b) of the RHA is an amendment and the latter part reads: “Provided that a Tribunal may in exceptional cases, and on application by a landlord, exempt the landlord from providing the information contemplated in this paragraph.”

The landlord / lady will have to get a ruling from the RHT granting an exemption.

Deposit:

The tenant has to pay a deposit if this was agreed between the tenant and landlord. The deposit must be paid before the tenant takes occupation and the landlord / lady has to invest the deposit in an interest bearing account.

Breach:

In respect of the tenant moving out of the dwelling before the lease period is over, the lease is deemed to have ended when the landlord / lady realises that the tenant is no longer in occupation. The landlord / lady can also take legal action against the tenant for breaking the lease, i.e. moving out before the lease period ended or without a proper notice (one calendar month’s notice in the case of a month-to-month periodic lease).

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