

# Third party damage and liability

If not covered by specific lease conditions, costs usually accrue to affected party

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WHO IS responsible for damages caused by a third party to the property occupied by a tenant?

Does a tenant or the owner have a claim against each other when a leased property or the personal belongings in it are damaged due to an armed robbery or burglary?

Is the owner-landlord obliged to provide security such as an alarm system, burglar guards or security fence for the tenant?

The landlord / landlady is not obliged to provide security to the leased property unless expressly undertakes to do so.

If a third party interferes with or disturbs the tenant's peaceful use and enjoyment, the tenant cannot hold the landlord / landlady responsible.

If the action is criminal, the landlord is not obliged to prevent this, for example, a burglary (housebreaking) or trespassing.

In terms of our common law, a third party causing damage to the leased premises (e.g. through break-in) is liable and either the tenant or the landlord, who

has suffered damage, will have a claim against the third party (burglar).

The tenant cannot hold the landlord responsible for damages caused to her property and the landlord has no claim against the tenant for the damaged to the leased premises.

The landlord La Rochelle Erf 615 Investments CC successfully sued the tenant Rebel Discount Liquor Group for rentals for the unexpired portion of the lease.

The tenant vacated the premises before the expiry of the leased term because of the numerous burglaries.

The tenant took the judgment of the trial court on appeal before three judges, van Zyl, Motala and Bozalek who delivered their judgment on October 12, 2005 in favour of the landlord.

In Rebel Discount Liquor Group (Pty) Ltd v La Rochelle Erf 615 Investments CC 2006 JDR 0031 (C) the tenant cancelled the lease for breach and vacated the premises.

The tenant believed that the landlord had failed to remedy the breach. The spate of armed robberies and burglaries that threatened the safety and welfare of its employees, it was argued, prevented the tenant from undisturbed use and enjoyment of the premises. The landlord also failed to 'maintain the leased premises in a proper condition by failing to provide proper security,' and this

breach led to a series of armed robberies and burglaries.

The court confirmed the reasoning of the trial court that whereas the landlord was responsible to maintain the leased premises fit for the purpose for which it was let, security did not form part of maintenance.

A landlord has a duty, in terms of our common law, to deliver and maintain the leased property in a proper / suitable condition for the purpose for which it was leased but it is the tenant who needs to ensure adequate security against crime.

Van Zyl J at paragraph [67] of the judgment said: “In view of these considerations I respectfully agree with Allie J's finding (in par [20] above) that the duty to deliver and maintain the leased premises in a proper condition relates to its physical condition and attributes, such as the construction of the building and the fixtures or fittings adhering thereto.

This is what requires maintenance, repair or replacement, as the case may be. Providing security, in whatever form, cannot be regarded as an element or attribute of such condition, unless it has been specifically agreed to by the parties.

“On the contrary, it is for the tenant to ensure that its business and employees are protected from criminal acts perpetrated by third parties, be it by physical means, such as the installation

of security gates, burglar proofing and the like, or by the use of appropriately qualified security personnel.”

What happens when a tenant is required in a written lease contract to effect insurance?

The landlord in *Van Achterberg v Walters* 1950 (3) SA 734 (T) on appeal against the judgment of the Witwatersrand Local Division, was granted an ejectment order against the tenant.

The tenant (lessee) had an insurable interest in terms of the lease but having failed to perform his obligation of insuring the lodging-house against fire, burglary and its contents was found to be in breach.

The clause in the lease stated: “The lessor shall be responsible for fire insurance on the property hereby let, and the lessee shall be responsible for fire and burglary insurance on the contents of the property, including furniture, linen, cutlery and things of a like nature.”

The court allowed the appeal with costs and granted an order for the ejectment of the tenant from the premises.

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