

Access rights and obligations

A TENANT rents a property for his or her quiet and undisturbed use and enjoyment. It is therefore the landlord's duty to fulfil this right during the lease period.

How does the landlord disturb or interfere?

- (i) by preventing a tenant access to the dwelling by barring entry,
- (ii) by preventing him or her from occupying the dwelling or part of it,
- (iii) cutting off water or electricity supply or putting up barriers that interfere with the tenant's ease of entry or exit to his or her dwelling,
- (iv) by refusing to attend to specific problems (e.g. leaking roof, faulty electrical wiring, and plumbing.)
- (v) by carrying out repairs which are not necessary or which can be done after the lease expires;
- (vi) by entering the dwelling without the tenant's consent,
- (vii) by introducing changes to the lease by various means; for example, either directly by requiring the tenant to pay for rates, or subtly by imposing changes through 'house rules',

- (viii) by installing CCTV to 'monitor' the tenants, thereby invading their right to privacy and dignity.

What are the tenant's remedies?

- (a) A tenant may demand that the landlord put the dwelling into the condition required by contract.
- (b) Seek a proportionate reduction of rental while remaining in occupation.
- (c) Cancel the contract and sue for breach.
- (d) Take the matter to court to prevent the landlord from continuing the interference.
- (e) Restrain the landlord by means of an interdict if he or she enters without permission.
- (f) File a complaint with the Rental Housing Tribunal (RHT) in terms of section 4(2) and section 4(3) of the Rental Housing Act, 50 of 1999, as an unfair practice.

The landlord cannot enter the tenant's dwelling unless arrangement is made with the tenant. A landlord who enters the tenant's dwelling without permission may be guilty of a criminal trespass. The landlord would be like a stranger should he or she enter the dwelling without permission or prior arrangement.

What are some remedies available to a tenant?

- The tenant may report the incident to the police.
- If the police are not helpful, the tenant should seek legal assistance: an attorney can obtain an urgent court

order putting the tenant back into the dwelling.

- The tenant can file a complaint with the RHT for violating his or her rights.
- In addition to regaining access to the dwelling, the tenant may have a civil claim for damages.

The landlord or landlady's rights

A landlord/lady must maintain the premises, therefore the law grants him or her reasonable rights to enter the dwelling to inspect it.

Such inspection must be carried out at a time that suits the tenant (section 4(2) and provisions of the draft Unfair Practices Regulations). However the tenant must not be “difficult” or unreasonable in agreeing to a time that suits both parties.

The following are grounds upon which a landlord / lady may request permission to enter the dwelling

- to inspect the premises for necessary reasons, such as damages;
- to make repairs to the dwelling;
- to show the dwelling to a prospective tenant, purchaser, mortgagee or its agents;
- to inspect the dwelling for damages as contemplated in section 5(2), or upon notification by the landlord or the tenant of the intention to terminate the lease.

Section 4(2) reads: A tenant has the right, during the lease period, to privacy, and the landlord may only exercise his or her right of inspection in a reasonable manner after reasonable notice to the tenant.

Section 9 of the draft Unfair Practices Regulations (UPR):

(1) A landlord may only enter a dwelling on reasonable notice to the tenant:-

- (a) to inspect the dwelling,
- (b) to make repairs to the dwelling;
- (c) to show the dwelling to a prospective tenant, purchaser, mortgagee or its agents;
- (d) to inspect the dwelling for damages as referred to in Section 5(3)(e)(f) of the Act, or upon notification by the landlord or the tenant of the intention to terminate the lease;
- (e) if the dwelling appears to be abandoned by the tenant; or
- (f) pursuant to a court order.

(2) A tenant must allow a landlord to enter a dwelling for the purposes set out under sub regulation (1), but such entry must be carried out at reasonable time.

The aggrieved party can lodge a complaint with the RHT on good grounds, that is, there exists an unfair practice in terms of section 4(2) of the RHA and section 9(1) and (2) of the Unfair Practices Regulations