

CLARITY ON OBLIGATIONS

The essentials of a lease deal

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LANDLORDS and tenants must ensure that they agree to certain essential requirements for a lease agreement to come into existence. There must be agreement regarding the dwelling to be rented out, the rental amount, when it is due and where and how it is payable (e.g., in cash, cheque, directly to landlord; agent, or into a bank account).

As for the rental, the tenant must pay the agreed amount on the due date. Late payment can result in cancellation of the agreement. The landlord can cancel for breach and start eviction proceedings if the tenant fails to remedy the breach.

Parties have to agree on the duration of the lease contract. It may be a fixed period, i.e. for six months or two years or a periodic lease, e.g., weekly or a month to month lease.

Duties and responsibilities of the parties must be clearly stated or understood. The parties must be clear about their responsibilities regarding internal and external maintenance.

Should there be service charges; parties must know who would be paying for the service charges. If it is the tenant, then the amount or proportion to be paid by the tenant in respect of electricity and water charges must be part of the agreement to avoid disputes.

If the tenant is required to pay a security deposit, the amount must be settled and paid before the tenant takes

occupation. The deposit must then be placed in an interest bearing account.

A joint inspection between the landlord and the tenant must be carried out before the tenant takes occupation, as well as three days before the tenant moves out.

If there are repairs needed, the landlord is under obligation to carry out the repairs identified.

The dwelling has to be rented out in a condition fit for the purpose for which it is let.

The tenant is responsible for any repair caused through damage by him or her or his or her family or visitors. The tenant is under duty to prevent any damage, vandalism or nuisance.

A landlord took all the necessary steps stated above to ensure that his rights and obligations and those of his tenants were clearly and properly understood.

He employed an agent to find a tenant, to ensure the written lease complied with the legal requirements, and to handle the tenancy portfolio.

The agent presented a prospective tenant who was considered a good tenant.

The landlord informed the tenant that since he was forced to relocate to another province, and was burdened by relocation costs and bond repayment, he would be grateful if the tenant could pay four month's rentals in advance.

The tenant obliged and an agreement was concluded. The relationship began to deteriorate when the tenant was unable to pay the full rental and made demands not allowed by their agreement.

The landlord terminated the lease for arrear rentals.

The tenant was aggrieved at the fact that he helped his landlord by giving him the advance rentals needed to alleviate his predicament. Parties had obviously crossed their contractual boundary.

In another case, a 76 year old woman allowed a tenant to occupy a portion of her property at a reasonable rental.

The landlady became dependent on the tenant for simple chores and a good relationship developed between them.

When the landlady attempted to increase the rental after several years,

the tenant was unable to afford the increase and paid a negligible increase. The landlady due to her poor health and failing memory, accepted the rental, but her children later decided that the tenant had to move out and served her with a notice to vacate.

Here too the landlady and tenant had compromised their contractual relationship.

These are some of the types of cases handled by the organisation of civic rights.

Often, though notices to vacate are not proper or valid.

However, meeting or discussing such matters with the landlord/lady provides another perspective leading to negotiations and perhaps a settlement.

There are instances when it becomes necessary not to represent certain tenants on moral grounds, and they are advised to seek legal representation for the legal challenge to the eviction notices.

It is immoral to take advantage of landlords/ladies who are vulnerable, old or frail.

Parties to a lease must maintain boundaries and endeavour to fulfil their obligations. This must not prevent them from ensuring a cordial relationship and to treat each other with respect and dignity.

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