

Non-paying tenants can cost packet

Arbitrary eviction expressly rejected under legislation

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THE court can be slow, costly and frustrating, especially when a landlord or landlady has a tenant who is not willing to move out of the dwelling. A tenant who has not paid rentals and refuses to move out, cannot be prevented access to the dwelling or denied access to water or electricity.

This places an enormous burden on the landlord/ lady, who may rely on the rental income to pay off the bond, levy, such as in a sectional titles scheme, and perhaps the service charges, for example for water consumption. There are instances where the owners were willing to abandon the accumulated rental arrears as long as their tenants moved out. These owners will now have to engage the services of attorneys to start the eviction process by ensuring that the leases are cancelled for breach.

Should the tenant fail to vacate the dwelling, then the court process would start- and if the high court is used, the legal costs will increase to include at least an advocate.

Arbitrary eviction

The landlord/ lady cannot evict the tenant without permission from a court of law (obtaining a judgment), or without giving reasons. In other words, arbitrary eviction is not allowed. The Constitution of the Republic of South Africa, 1996, makes it illegal for a landlord or landlady, or any person, to evict a tenant without a court order. Section 26(3) states:

No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

The Rental Housing Act (RHA) allows a landlord/ lady to terminate a lease on grounds that do not constitute an unfair practice, and are specified in the lease. Section 4(5) of the RHA reads: The landlord's rights against the tenant include his or her right to:

- (a) prompt and regular payment of a rental or any charges that may be payable in terms of a lease;
- (b) recover unpaid rental or any other amount that is due and payable after obtaining a

ruling by the Tribunal, or an order of a court of law;

- (c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease.

Should a tenant believe that the eviction notice constitutes an unfair practice in terms of the RHA and its Unfair Practice regulations, he or she may lodge a complaint with the provincial Rental Housing Tribunal (RHT). Sometimes the RHT is used to delay the eviction process through the courts by the tenant lodging a complaint with the RHT in the absence of an unfair practice directly linked to the cancellation of the lease. The RHT may have to hold a hearing and give a ruling that the notice to vacate does not constitute an unfair practice, so that the landlord can approach a court for an eviction order (*Mainik CC v Ntuli and others* [2005] JOL 16307 (D)).

The RHT is not given the powers to grant an eviction order in terms of Section 13(14): The Tribunal does not have jurisdiction to hear applications for eviction orders. The RHA changes the common law position even further. The landlord/ lady has the right to terminate or cancel the lease contract, and in this way inform the tenant to move out of the dwelling by a certain date. However, the landlord/ lady can only do this under certain conditions.

The RHA requires the landlord/ lady to make sure that the lease contract is cancelled:

- (i) without any unfair practice;
- (ii) the reason for such a cancellation is specified in the lease contract, e.g. a cancellation clause must be in a lease contract allowing the landlord/ lady to cancel or "break" the agreement.

In summary, the landlord/ lady has to get permission from a court to evict a tenant by getting an ejection order. The courts have to follow decisions of superior courts that may affect the eviction process.

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