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Oral leases are legal and binding

Tenants can request conditions in writing

A TENANT of 12 years reacted with shock when she received a notice to vacate without a valid cause. She had not breach her lease and the notice terminating her lease provided no reason.

On the tenant's instruction, a letter was sent to the attorney seeking an explanation. The attorney was informed that the tenant: -

- Disputed that the notice was based on any genuine reason, which would have been disclosed in the said notice anyway;
- Observed that the notice served to terminate her lease was not a cancellation for any breach.

A written response from the landlord's attorney was as shocking as the notice itself. He stated that his client was not obliged to give any reason, save for the fact that his client was the owner and wanted the dwelling back. The law had changed substantially over the past 15 years and our courts have also handed down judgments that require a reason.

However, the attorney did give several reasons; the most confusing was that the verbal (oral) lease was an 'informal' one and that the tenant failed to sign a written lease contract a month earlier when she was called upon to do so. She was warned that she would be given notice to vacate if she failed to respond within 14 days.

Oral agreements are binding once certain legal requirements are met. Our courts have held that an oral lease is valid and binding once parties have agreed on the fundamental points. The common law does not place less weight on an oral lease. One can infer from the conduct of the parties that there is a lease contract.

In Standard Bank of South Africa Ltd and Another v Ocean Commodities Inc and Others [1983] 1 All SA 145 (A), the judge remarked (although the case dealt with the rights to certain shares and debentures):- "Moreover, I do not think that the tacit agreements alleged can be inferred from the facts on record. In order to establish a tacit contract it is necessary to show by a preponderance of probabilities unequivocal conduct which is capable of no other reasonable interpretation than that the parties intended to, and did in fact, contract on the terms alleged."

Judge Leeuw in MEC of Public Works v Harrison (1638/05) [2007] ZANWHC 56 (4 October 2007) had to establish if an oral lease contract existed, as claimed by the occupant Harrison, who refused to vacate a property owned by the Department of Public Works. Harrison failed to prove that

there was an oral lease and was ordered to move out within 30 days of the court order or to be removed by the sheriff.

> "I have already alluded to the fact that the Respondent is unable to produce a lease agreement in order to prove that there was such an agreement. Needless to say that it is doubtful whether the Respondent did ever pay any rental towards the occupation of this house in view of the paucity of information with regard to the lease agreement.
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> "The fact that the Respondent could not produce a single valid receipt to prove such payment save for the R750-00 cheque payment which was not honoured or cashed at the bank casts doubt on the ingenuity of the Respondent's allegations with regard to the lease agreement, which is highly questionable in the circumstances.
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> "Because of the absence of a valid oral or written agreement of lease in that regard, I conclude that the Respondent's occupation of the property was neither in terms of a valid written or oral agreement. Nor can it be implied from the conduct of the Department and the Respondent that such an agreement existed."

In terms of Section 5(1) of the Rental Housing Act 50 of 1999 as amended (RHA):-

> "A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 of 1969)."

Section 5(2) of the RHA allows a tenant to request the written confirmation of the original terms and conditions of the oral lease.

The landlord must do so at the request of the tenant. The landlord is not afforded the same right: -

> "A landlord, must if requested thereto by a tenant, reduce the lease to writing."

An oral lease is therefore binding between a landlord and tenant and the parties may agree to have it reduced to writing. If parties did not mention a written lease contract at the time they entered into an oral contract, the tenant can, during his or her tenancy, request that the terms and conditions be written down and the landlady / landlord must oblige in terms Rental Housing Act.

Sometimes, a party may decide to have the oral agreement recorded for convenience. This is helpful when a dispute arises. In this instance, failure to record the terms and conditions of the oral lease does not render the agreement invalid.

This is different from the situation where the parties have orally agreed that there will be no lease contract unless the terms and conditions are in writing.

Writing is then the basis of an agreement, without which, there is no lease contract.

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