

Oral deals often ignored

Rent increase and escalation must be included in the lease

THE matter of rentals affects most tenants because of affordability, frequent and exorbitant increases or unwarranted increases in relation to the conditions of the dwellings.

Can a landlord increase rental without a reference or stipulation in the lease for such an increase?

STATUTORY REQUIREMENT

Statutory requirement” means what is required by statute or law, and since the RHA is an act of parliament or a statute, it lays down what needs to be in the lease agreement.

Section 5 (6) (c) of the Rental Housing Act 50 of 1999, as amended (RHA) reads: “A lease contemplated in subsection (2) must include the following information:

- (a) The names of the tenant and the landlord and their addresses in the Republic for purposes of formal communication;
- (b) the description of the dwelling which is the subject of the lease;
- (c) the amount of rental of the dwelling and reasonable escalation, if any, to be paid in terms of the lease;
- (d) if rentals are not paid on monthly basis, then the frequency of rental payments;
- (e) the amount of the deposit, if any;
- (f) the lease period, or, if there is no lease period determined, the notice period requested for termination of the lease;
- (g) obligations of the tenant and the landlord, which must not detract from the provisions of subsection (3) or the regulations relating to unfair practice;
- (h) the amount of the rental, and any other charges payable in addition to the rental in respect of the property.”

Read with the requirements of the common law and law of contract: -

- a) A landlord / landlady may give a written notice of a rental increase, which becomes effective when the rental agreement is renewed by mutual agreement.
- b) The law requires a minimum advance notification for such a change.
- c) The law does not limit the amount by which a landlord / landlady may increase the rent.

However, according to the RHA in terms of section 5 (6) (c) the rental increase must be reasonable and such escalation must be included in the lease.

Rental Housing Tribunals (RHTs) in most instances disregard this mandatory requirement and the KZN RHT for example, has granted exorbitant increases. In recent weeks, the RHT has informed tenants that a landlord is entitled to an increase and has not applied itself to ascertain if the notice of increase meets the basic requirements of law.

The common law position that the landlord cannot increase the rental unless there is an escalation clause in the lease remains unchanged.

According to Delport (1997) “In the absence of an escalation clause a landlord is not entitled to increase the rental merely because of inflation” (249). Some RHTs appeared to be influenced by the new owner’s bond or purchase price and support the notion that the tenant must pay a substantial increase for the bonded property. This is incorrect and goes against the preamble of the RHA.

Judge President Somyalo (in *Bekker and Another v Jika* 2002 (4) SA 508 (E) at 522), sums up the intention of the RHA: -

“The Rental Housing Act, a post-constitution statute, is also clearly intended to protect the vulnerable. Its preamble clearly embraces the fundamental rights entrenched in the Constitution (ss 25 and 26). It seeks, inter alia, to protect parties from unfair practices and exploitation.”

WRITTEN LEASES AND RENT INCREASE

a) Escalation Clause:

Written leases must contain a rent clause, which allows a rent increase before the renewal date, provided the tenant abides by all the conditions in the lease.

b) Automatic Renewal Clause

If the landlord/lady intends to make any change in the renewed lease regarding rental increase, he/she must notify the tenant, in writing, on or before the tenant’s deadline for notice of termination of the rental agreement. Otherwise, the lease is renewed on the old rental for a further fixed period.

UNINTENDED CONSEQUENCES

It is one of several peculiarities of the RHA that in making a provision mandatory (compulsory) such as a rent “escalation must be included in the lease” parties to an oral lease appear to be ignored.

Dr Sayed Iqbal Mohamed is the chairman, Organisation of Civic Rights. For tenants’ rights advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451.