

# Renewing your rental agreement

## Read your lease carefully

WHAT notice period is required in terms of the agreement between the tenant and landlord?

A lease clause states: “Parties agree that the lease will start on the first day of April 2008 and will expire on the last day of March 2010. However, the tenant may renew the lease for a further two years, provided she informs the landlord in writing before the expiry date.” The tenant may terminate the tenancy by giving the landlord three calendar month's written notice.”

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The tenant had given her landlord notice at the beginning of March 2010 that she was moving out at the end of the month.

She requested that they make arrangements to inspect the dwelling jointly so that her security deposit can be refunded without delay.

The landlord responded that she failed to give him the required notice, that is, three calendar months.

He drew her attention to the relevant clause of the lease and demanded that she gives him three calendar month's written notice, failing which, she would forfeit the deposit and will be liable for rentals for the notice period.

The tenant was confused. She knew that she was not required to give a notice at all since the lease was for a fixed period of two years.

No notice was required by either party, because both parties agreed in the lease that it was going to be for two years. This was clearly indicated by when the lease period would start and when it would come to an end.

The reference to “the tenant may terminate the tenancy by giving the landlord three calendar month's written notice,” should have read “the tenant may renew the tenancy by giving the landlord three calendar month's written notice prior to the lease expiring.”

Even if it is accepted that the clause was for termination, this would apply after the two year period had expired.

When the lease expires, and there is no renewal but the tenant continues to occupy and the monthly rentals are

accepted, the lease becomes a periodic (monthly) lease.

A month-to-month lease can be terminated upon either the tenant or landlord/lady giving a calendar month's notice.

Where parties agree to give three months' notice, as in the case above, then they are bound by the notice period since the terms of the expired lease would still apply.

### **Tacit consent**

Section 4(5) of the Rental Housing Act 50 of 1999 states: "If, on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease".

Should the matter end up in litigation, the courts would look at what the parties intended, and may look at the surrounding circumstances of the contract entered into and the subsequent conduct of the parties.

In *Brink v Premier, Free State & another* 2009 (4) SA 420 (SCA), the tenant failed in her appeal to get her landlord to renew the lease for a second five year period.

The court found that there was no mutual agreement and that the renewal period had lapsed. The appeal was dismissed with costs.

According to Judge Ponnar, "The matter is essentially one of interpretation. According to the "golden rule" of interpretation the language in a document is to be given its grammatical and ordinary meaning, unless this would result in some absurdity, or some repugnancy or inconsistency with the rest of the instrument."

In *Shoprite Checkers (Pty) Ltd v Everfresh Market Virginia (Pty) Ltd* (previously known as *Wild Break 166 (Pty) Ltd*) [2010] JOL 25835 (KZP), the court dealt with the interpretation relating to the dispute of the renewal clause when the lease was terminated and eviction sought by the owner/landlord (Shoprite Checkers).

Judge Koen stated: "The clause in the present matter falls into the final category identified by Kirby P of being a promise, assuming it to be one to negotiate in good faith, which by its very nature, purpose and context is simply too vague and uncertain to be enforceable."

He granted an eviction order with cost. The matter is presently before the Constitutional Court awaiting that court's decision to be granted leave to appeal to the Supreme Court of Appeal.