

Tenant has temporary ownership

Occupation legally protected

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By Sayed Iqbal Mohamed

OWNERS or landlords do not realise that they choose to rent or lease. They are not compelled by law to do so and they are generally not motivated by altruistic reasons. It is a decision to earn an income and to generate profit; not for the purpose of social responsibility.

Once that choice is exercised and a lease (oral or written) executed, a legal relationship is created which is governed by various laws binding the landlord and/ or /owner and the tenant.

The conclusion of a lease results in the tenant becoming a temporary owner for the duration of the lease. The owner or landlord/lady cannot enter the dwelling or property without a legally valid reason, and, without the permission of the tenant.

If the tenant fails or refuses to vacate, based on or in the absence of legal grounds, there are proper legal processes and procedures to be followed. The tenant too is bound by these if he or she were to take action for breach or some other reasons that affect the undisturbed and peaceful use and enjoyment of the leased dwelling.

In the *Soffiantini v Mould* (1956 (4) SA 150 (E)) case the judge held that the landlord was trespassing when he entered the property leased to a tenant.

“The landlord is not entitled to enter the leased premises without the consent of the tenant. Pothier, para. 76 and 80. If he does he is thereby constituted a trespasser. (Halsbury, vol. 20, para.

243) The lessee is, in such a case, entitled to protect his rights by means of an interdict.” “The fact that he might have a reasonable purpose in entering the leased premises does not entitle him to do so without permission. It would be a sorry state of affairs if landlords could enter premises leased to tenants at will if they wished to do so, whatever the purpose.”

A recent dispute relating to the tenant’s electricity led to a Durban tenant and her family being removed, allegedly forcibly, from the dwelling.

Seeking an urgent High Court interim order granted on June 2, affidavits filed by the tenants told of events that allegedly culminated in the tenants being

denied access to their dwelling.

The landlady, her husband and 17 other men, forced their way into the dwelling rented by a couple and their two children in Sydenham. The tenants had signed a written lease that commenced on August 1, 2010 and expired at the end of July 2011.

The first incident of alleged trespass and forced entry was on April 29, when the landlady and her husband, accompanied by three unknown men, allegedly gained access to the home by cutting off the pedestrian gate with an angle grinder. The couple were at home, they said, when the group walked in and told them that the three men would be moving in with them.

When the couple protested, an affidavit read, the landlady said that she could do whatever it was that she pleased as she was the landlady. An assault charge was laid after the female tenant was allegedly pinned to the floor and threatened.

On Wednesday morning June 1, 2011 the landlady, husband and 17 men in three vehicles arrived at the property, the tenants claimed. After gaining access by cutting through the pedestrian gate, the house key was allegedly forcibly removed from the woman tenant. A neighbour, also a tenant on the property, apparently telephoned the police. The Durban flying squad responded, but later left, leaving behind the Sydenham police.

The male tenant went to his bedroom for his firearm, allegedly to protect his family. He was later arrested and imprisoned overnight after a charge was laid by the landlady. Police bail was denied. When he appeared in the Durban Magistrate's Court the next morning, the charge was withdrawn.

The Sydenham police locked the door to the dwelling and handed the keys to the landlady. The couple's lawful occupation was disturbed and they were unlawfully dispossessed of their dwelling.

Judge Kate Pillay granted a spoliation order compelling the landlady and her husband to immediately restore peaceful and undisturbed possession of the residential premises to the couple. In the event they failed to comply with this order, the Sheriff and/or his deputy was directed to carry out the order.

The judge also granted a restrictive interdict whereby the landlady and her husband, and all and any persons acting through and on their instructions, were interdicted from entering the rented dwelling.

They were further interdicted from threatening, harassing or intimidating the couple. These orders were to operate as interim orders until tomorrow, being the return date. The landlady and husband were also directed to pay the court application costs.

The sheriff and his deputies, after much resistance, had the dwelling restored to the couple on the morning of June 3.