

Who has power to collect rent?

Sayed Iqbal Mohamed

If a tenant fails to pay the rental to the landlord/lady or to a duly appointed agent, the tenant is in breach that could lead to the cancellation of the lease, recovery of the rental not paid and eventually the tenant can be evicted. There are certain instances when the law allows a third party, someone who is not a party to a lease, the legal right to collect rentals from a tenant. The following are a few examples when the law gives the legal right or authority over the rental to another party.

- The municipality. An owner of a sectional title unit who failed to pay rates may lose the right to his or her rental when the municipality decides to recover the rates through the tenant's rental.
- The Local Government Municipal Property Rates Act 6 of 2004 gives a municipality the legal right to collect the rentals from a tenant whose landlord/ landlady as the owner of the dwelling, owes the municipality rates. The municipality must show the tenant proof that it has the legal right to the rental.
- The Bank. The bank with whom the dwelling is mortgaged (*Absa Bank Ltd v Bisnath NO and Others 2007 (2) SA 583 (D)*) can collect rentals from the tenant whose landlord/ landlady as the owner, defaulted on bond repayments. The bank must first obtain a court order against the owner and authorisation from the court to do this.
- A new owner who has acquired the right to collect rentals owed to the previous owner (*Rishworth v Secretary for Inland Revenue 1964 (4) SA 493 (A)*; *Thekwini Properties (Pty) Ltd v Picardi Hotels Ltd (And Others As Third Parties) 2008 (2) SA 156 (D)*).
- Cession of rentals (that is, given the right by another; when that right is transferred to another) involving tenant, subtenant and a creditor whereby the subtenant is required to pay rental to the creditor and later required to pay to a third party chosen by the creditor (*Estate Frankel and Others v Estate Fitzpatrick; Estate Frankel and Others v Denoon and Another 1943 AD 207.*)
- A new owner. A tenant is obliged to pay rentals to the new owner who takes over the dwelling (acquires ownership rights) from the previous owner/landlord (*Mignoel Properties (Pty) Ltd v Kneebone 1989 (4) SA 1042 (A)*).

There are instances where the courts held the view that the tenant was not bound by the lease in the case of change of ownership and could therefore terminate the lease.

A landlord who was told by the high court that his tenant was entitled to terminate the lease took the case on appeal to the Appellate Division. In a unanimous judgment, the court clarified this point and concluded that the tenant was not entitled to cancel the lease when the new owner bought the property from the original landlord. The new owner or landlord is required by law to recognise the tenant and is not allowed to "break" the lease as long as the tenant observes the conditions of the lease.

Similarly, the tenant has to recognise and observe the new owner's rights as a landlord, provided the lease does not have any option or right of election (whether to continue with the lease or not to). In *Hyprop Investments Limited and Another v NSC Carriers and Forwarding CC and Another (2009/12568, 2009/47543) [2010] ZAGPJHC 20 (12 April 2010)*, the lease was cancelled for non-payment of rent. The court held that the tenant continued to unlawfully occupy the premises and unlawfully enriching itself by failing to pay monthly rentals and ancillary charges.

The tenant was given seven days to vacate the premises and to pay the arrears with interest as well as rentals for the period after the lease was cancelled when the tenant continued to occupy.

In *Mngomezulu v Soweto City Council 1989 2 SA 331 (A)* the supreme court of appeal found that the City Council was not entitled to evict the tenants for non-payment of rental. The rental had to be determined and fixed in terms of the relevant law and since this was not done, rental was not payable. The tenants' ejection from the dwelling was unlawful but since they were restored possession pending the appeal, the court declared that the City Council was not entitled to eject the tenants in terms of section 65 of the Housing Act 4 of 1966.

Dr Sayed Iqbal Mohamed is the chairman, Organisation of Civic Rights. For tenants' rights advice, contact Pretty Gumede at 031 304 6451 This article Online: <http://www.iol.co.za/dailynews/consumer/who-has-power-to-collect-rent-1.1178000>