

Who is liable for state of dwelling?

Landlord, agent go head to head

A dispute between an owner or landlord and his agent regarding the condition of the leased dwelling raises the question of who is responsible. The agent may be a friend, an attorney or an entity such as an estate agent. A tenant who moves into the dwelling without electricity and water supply can cancel for breach and sue for damages or is entitled to a reduction in rental for the period she or he did not have full use and enjoyment.

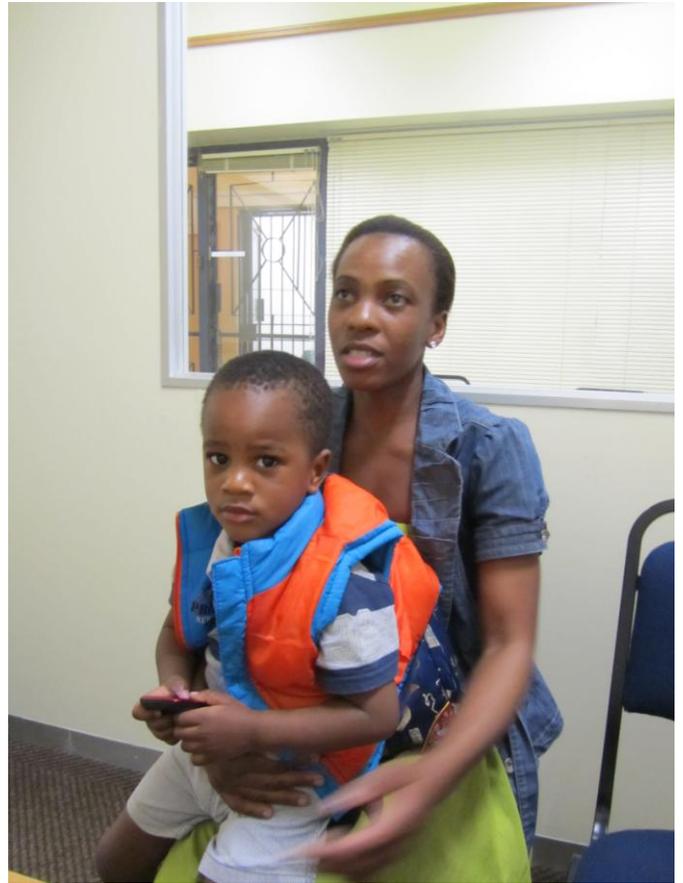
Who is responsible for the lease if the agent concludes it with a tenant? The owner or landlord is ultimately responsible to the tenant even though the lease is signed through his agent.

This includes the payment of rentals and a security deposit to the agent where the law holds the landlord accountable and under duty to refund rental in certain circumstances and the deposit, irrespective of what the agent may have done with the money. In fact, the owner who claims that the agent acted without a mandate or exceeded his powers will not be absolved.

On August 30, Petros Phiri signed a lease with Homerent, which is registered with the Estate Agency Affairs Board as Blignaut's Home Finders cc trading as Homerent.

Phiri, who was an existing tenant of Homerent, had to move out by the end of August and Homerent was able to find him accommodation in time.

They inspected 3 Livingstone Terrace, 28 Livingstone Road, Glenwood, and having noted



Thanda Phiri with her son Alonzo six days into the lease without electricity

the dwelling needed to be cleaned, the lease was signed. Phiri was relieved that he would be able to move into Livingstone Terrace with his wife, Thanda, and their two children, Akeiba and Alonzo.

But Phiri's nightmare began when he realised a day before he took occupation of their new home that there was no electricity and water.

The electricity meter was removed by the municipality and the water was a mere trickle.

The Phiris had no choice but to move into Livingstone Terrace because they had to vacate their previous dwelling on August 31 when the lease ended.

They approached Homerent's branch manager, Tamar Atcheson, who then contacted the owner, Arshon (Sean) Ramesh, in Johannesburg. Homerent tried everything within its power to have the services reconnected but it was ultimately the owner who had to settle his previous tenant's bill.

According to Ramesh, his previous tenant had sublet the flat or unit. The electricity account with the eThekweni Municipality went into arrears when his tenant and the subtenant failed to make payments.

Ramesh alleged the subtenant had illegally reconnected electricity resulting in the municipality removing the meter.

The electricity and water account was in the tenant's name and Ramesh claimed he was not notified by the municipality of the illegal reconnection and removal of the meter.

Advertised

He said his father had advertised the flat when the subtenant moved out, not aware that there was no electricity meter. Homerent responded to the advertisement, indicating that they had a tenant.

Ramesh said a lease drafted by Homerent had been signed by Phiri even though he had no knowledge of it or given authorisation. He later ratified the lease around September 12 and agreed to Homerent acting as an agent.

He believes it was Homerent's responsibility to carry out an inspection before a lease was presented to a prospective tenant, ensuring that the flat was liveable, and to have informed him of any problem to rectify.

When informed about the problem regarding the electricity, Ramesh said he had responded by settling his previous tenant's arrears and the penalty, totalling R17 000. He had also incurred a further loss for the 10 days the Phiris did not have full use and enjoyment of the flat.

The owner of Homerent, Chris Blignaut, disputes Ramesh's version and produced proof that Ramesh had signed the authorisation on August 29, the day the lease was concluded for Livingstone Terrace. Inspection of the communication between all parties and documents show Homerent was indeed authorised to act as an agent and had made every attempt to get Ramesh to settle the arrears with the municipality. It monitored and liaised with the landlord, municipality and contractor to have the installation of the meter speeded up and the services reconnected.

Blignaut confirmed that Homerent's policy is to carry out an inspection of a client's property before renting it out and its lease provides for a reimbursement to the tenant by its client in the event the tenant does not have full use and enjoyment of the leased dwelling.

Blignaut said: "Homerent and I believe many other agencies are suffering abuse, disloyalty and unfair treatment from some landlords at the expense of the agencies and the tenants."

Phiri is still upset with Homerent for failing to ensure there was electricity and with the owner who threatened to cancel his lease immediately if any amount was deducted from the rental. In a subsequent e-mail, Ramesh confirmed a proportionate reduction that he believed was due to Phiri.

It would help when agents acting for owners demand written proof from their clients that (1) the property to be leased has no outstanding amount with the municipality, and (2) the owner has no municipal debt on any other property.