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Introduction

South African law has developed over the years to provide important rights and protections to landlords renting out accommodation. In the past, only the common law (case law passed down by judges) was used to govern the relationship between landlords (sometimes referred to as lessors) and tenants (sometimes referred to as lessees). However now, although the common law is still used in South Africa, the South African Constitution now defines the and the right to adequate housing in section 26 of the Bill of Rights and the Rental Housing Act 50 of 1999 (amended in 2007) is the main piece of legislation that regulates the relationship between landlords and tenants.

Amongst other things, the Rental Housing Act sets out what should be contained in a lease agreement (sometimes referred to as a rental agreement or a lease), outlines the rights and responsibilities of both parties in a landlord-tenant relationship, and provides information on the cancellation or termination of a lease. The Act also establishes Rental Housing Tribunals which are meant to deal with unfair practices between landlords and tenants. In Gauteng, the provincial government has also written regulations to define fair and lawful conduct between landlords and tenants. These are known as the Gauteng Unfair Practices Regulations. The Rental Housing Act and the Regulations are available in a separate booklet produced by the Socio-Economic Rights Institute (SERI).

Many landlords are not aware of their rights (and responsibilities), which can lead to tension and misunderstanding in the landlord-tenant relationship. This guide aims to provide landlords with the

kind of information they need to exercise their rights and to act appropriately if there is a problem with their rental property. The guide is structured in three sections:

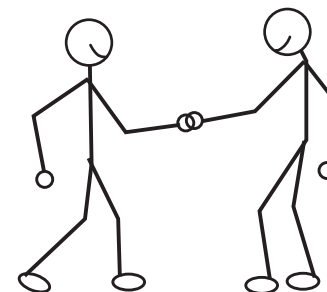
1. Starting the landlord-tenant relationship
2. Navigating the landlord-tenant relationship
3. Ending the landlord-tenant relationship

In each of these sections there are a number of key questions commonly raised by tenants and landlords, and the answers provided are meant to assist landlords to better navigate the landlord-tenant relationship.

While this guide tries to be as useful as possible for landlords, it does not replace legal advice or council and you should always seek advice from appropriate sources such as the Rental Housing Information Office, a Rental Housing Tribunal or a lawyer if you are unsure about how the law applies to you.

Section 1

Starting the landlord-tenant relationship



1.1 What are the responsibilities of landlords?

Landlords have the following responsibilities:

- You must make sure that the property is in a reasonable condition when the tenant moves in.
- You must provide a written lease agreement if the tenant asks for one.
- You must issue a receipt for every payment received.
- You must allow the tenant the right to privacy and to enjoy their home undisturbed, which means that you cannot enter the property without the tenant's permission and only after you have given notice.

1.2 What are the responsibilities of tenants?

Tenants have the following responsibilities:

- They must pay the rent and services on time.
- They must use rental property only for the purposes agreed in the lease agreement. If they say that they are only going to live there, then they can't suddenly start running a business without agreement from the landlord.
- They must not sublet the property or let other people take over the property without your agreement.
- They must maintain the interior of the property against "wear and tear".
- They must not make any changes to your property such as knocking down walls, painting etc without agreement your agreement.

1.3 What repairs are tenants and landlords responsible for during the lease period?

A tenant is generally responsible for maintaining the inside of the property e.g. replacing globes and fittings on locks, handles and windows etc. The landlord is generally responsible for maintaining the outside of the property e.g. ensuring that plumbing, electrical systems and any lifts are in working order.

A landlord must also repair any damage caused by "fair wear and tear", which refers to any damage or loss to an item at the property which happens as a result of natural causes or ordinary use over time. This could include peeling paint, faded carpets, minor marks on walls etc. Removing mould or mildew in bathrooms is generally the responsibility of the tenant, except when it is caused by leaking pipes or cracks in walls (then it is the landlord's responsibility to fix).

1.4 What is a lease agreement?

A lease agreement (or lease) is a contract between a tenant and landlord setting out what has been agreed to around a range of issues

important to the landlord-tenant relationship (for example, the rent amount, rent increases, notice periods for cancellation of lease, responsibilities for repairs on the property).

A lease is a legal document, so make sure you are aware what everything means before you sign one since you are legally obliged to carry out the terms of the lease agreement that you have signed.

1.5 Does a landlord need a written lease?

You do not need a written lease. An oral lease agreement – where the rent and the rented property are identified in a verbal agreement between the landlord and tenant - is also valid.

Leases can also be formed by conduct (actions). For example, if your tenants pay you on a regular basis and you accept the money on the shared understanding that the payment is being paid in return for the tenant being allowed to live in the rented property, then there is a lease. No words need be spoken or written down for there to be a legal agreement.

It is normally useful for a lease to be put in writing. Without a written lease signed by both parties, it is often difficult to prove that something was agreed, for example in court or in the Rental Housing Tribunal. It becomes one person's word against another's. A written, signed lease agreement can be a very powerful tool for both parties.

1.6 Can a tenant demand a lease agreement?

Yes, in terms of section 5(2) of the Rental Housing Act, a landlord must provide a written lease if a tenant asks for one.

1.7 What must be contained in a lease?

At the very minimum, a lease must -

- Identify the parties to the agreement i.e. the names of the landlords and tenants;
- Describe the rented property; and
- Set the rent amount payable.

Usually, a lease will contain many more provisions (i.e. things that have been agreed to) than this, but only the parties, the rent and a description of the property need to be agreed on in order for you to have a valid lease.

1.8 What else should be in a lease?

A lease should normally include agreement between the landlord and tenant on a number of important issues, including:

- A description of the property that the tenant will be able to live in and use;
- Rental amount and reasonable escalation, if any (normally rental escalation can be done on an annual/yearly basis and a 10% increase per year is considered reasonable);
- Any other charges, e.g. extra payments for security service;
- Frequency of rental payments (if not monthly);
- The deposit that the tenants will have to pay;
- Lease period, or notice period requested for termination of the lease (it should be clearly stated how much notice must be given and when);
- Obligations of both parties (which cannot detract from the Rental Housing Act or Unfair Practice Regulations);
- List of defects on the property (attached to the lease);
- In a shared building, House Rules, if any (attached to the lease).

1.9 Is there anything that a lease cannot change?

Section 5(3) of the Rental Housing Act makes it clear that there are some important standard clauses that a specific lease cannot simply ignore or go against. Therefore, if a lease contains something that is contrary to what is in the Rental Housing Act, then they would not be upheld by a court.

These standard clauses include the following:

- The landlord must give the tenant a written receipt for all payments made and received;
- The landlord may require the tenant to pay a deposit before moving in, but this cannot be more than the amount agreed to in the lease;
- Before the tenant moves in, you and the tenant must together inspect the property to list any damage, in order to decide what the landlord must fix and to record any damage that happened *before* the tenant moved in (this is important when it comes to claiming back a deposit);
- During the period of 3 days before the lease expires, the landlord and tenant must together inspect the property (at a time convenient to both parties) to assess if there is any damage caused during the tenant's occupation of the property..

These standard clauses contained in the Rental Housing Act are compulsory, even if a lease includes provisions that are different. For example, if a lease includes a clause that states that money will be automatically deducted from the tenant after the landlord conducts an inspection of the property on his or her own time, that clause is invalid because the Rental Housing Act says something different.



If you have an oral agreement the least that you and your tenant should agree to is:

- What property/space is being rented
- The rental amount and how often its paid
- The period of the agreement
- How notice is given by you or the tenant to terminate the lease
- How often or under what conditions you can see your property

1.10 Is there anything that tenants have to be careful about in a lease agreement?

Whether oral or written agreement, you need to make sure certain parts of the lease are clear to both of you and that you have agreed to:

- Aside from the period of the agreement you both need to be sure about the consequences of ending a lease earlier (i.e. will each have to pay penalties? If so, how much?)
- What is a reasonable deposit: generally between 1-2 months rental is considered reasonable.
- The rate of escalation of rent per year. Generally between about 10-15% per year is considered reasonable
- How often or under what conditions you can see your property.

1.11 Where can I get a copy of a lease?

You can buy examples of leases from some stationery shops (e.g. CNA), or on-line

http://wced.pgwc.gov.za/documents/Housing_allowance/annexure_b.pdf

but it will be up to the you as the landlord to ensure that the lease is suitable for your needs and that it takes the Rental Housing Act. The lease should be signed by both the landlord and tenant.

1.12 How long does a lease last?

A lease can last for any period of time; however it is not possible to have a lease “forever”, or to have a vague agreement that a tenant can stay “as long as she wants”, or “as long as the landlord wants”. The lease must either set out the length of time it will last for, or say what future event will bring it to an end (terminate the lease), even if the parties do not know exactly when this will happen. If the lease agreement does not state a definite period of time for which it will run, then the lease is effectively a month to month (periodic) lease.

A *Periodic Lease* means that every month the lease comes to an end, and a new one starts at the beginning of the following month.

There are different ways that a lease can come to an end or be renewed, depending on what kind of lease you have and what is stated in the lease about cancellation and the notice period required for termination. This is discussed later in this guide.

1.13 What if I buy a property that has an existing tenant?

If you buy a place and there is already a tenant who has a lease for less than 10 years then the tenant cannot be evicted automatically. You as the new owner must honour the existing lease agreement and so you take over the existing lease. You cannot interfere with the tenant’s use of the property until their lease has expired or is terminated and they move out. This is called the huur gaat voor

koop rule, which means, roughly, that “a lease is stronger than a sale.”

1.14 What is a deposit?

A deposit is an amount of money paid to the landlord to cover possible damages to rental property or any potential defaulting i.e. non-payment of rent. If none of these occur, the deposit should be refunded in full plus interest after the lease ends.

1.15 Must a tenant pay a deposit?

Most landlords will require a deposit (sometimes referred to as a security deposit) and the law allows you to ask for one. The deposit protects the landlord if the tenant leaves suddenly without paying rent or damages the property during occupation.

1.16 How much is reasonable for a deposit?

A reasonable deposit is generally considered to be between one and 2 months' rent. Most often the deposit is the equivalent of one month's rent. The deposit must be paid when the lease is signed and before the tenant moves in.

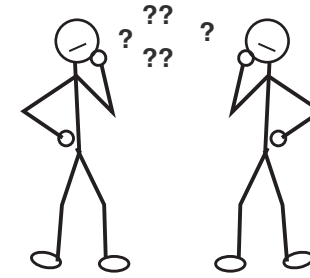
1.17 What if there are things that need to be fixed before the tenant moves in?

As already mentioned, before moving in, you and the tenant must together inspect the property and list any damage. This is done for two reasons. The first is so that agreement can be reached on what the landlord must fix before the tenant moves in. The second is to record any damage to the property. This is very important when it comes to giving back the deposit after the lease ends, and can prevent a situation where there are disagreements about damage to the property and who caused it and when. A list of all damage to

the property should be signed by both parties and attached to the lease. If during the inspection you as the landlord promise to fix something, then this should be put into writing or, ideally, included as a clause (section) in the lease.

Section 2

Navigating the landlord-tenant relationship



2.1 How does a landlord know how much to charge tenants?

To work out how much rental you should you need to consider a number of factors:

- A good place to start is to calculate how much you would need to pay off a 100% bond: generally for houses under R1million, rent is roughly 0.7% to 0.85% per month of the market value. So on a R500,000 the calculated monthly rental would be between R3,500 to R4,250.
- What are all of the costs associated with my unit i.e. levies, bond?
- What are the average rentals being paid in my area for similar properties?
- Does the rent need to cover utilities?
- Does it cover transfer fees and stamp duties?
- Does it cover insurance on the property and possibly rental insurance?
- There is a need to consider whether the rent will allow you to build up some cash reserves to pay for large maintenance or if the property should be vacant for a period of time.

These are some of the things that you will need to consider and you need to see which ones apply to your particular circumstances.

2.2 Who pays for municipal services?

There is no rule about who pays for which municipal services (water, electricity, sewerage, refuse). This means that there must be agreement between the tenant and the landlord about who pays for which municipal service and how to go about this. Most often the municipal account or bill remains in an owner's name and the owner bills the tenant for the services used. The tenant then pays the owner, who then pays the municipality or service provider (for example, Eskom or City Power).

However, the tenant has the right to see the municipal account to ensure that what is being billed is correct. As mentioned above, in terms of section 5(3) of the Rental Housing Act the landlord must give the tenant a written receipt for all payments received.

If the property that the tenant is staying in has their own water or electricity meter, they can only be billed for the services that they use. If they share a meter with another tenant, or the landlord, they can only be billed for a fair proportion of the services consumed through that meter. This is normally the total amount consumed by a meter divided by the number of people or households sharing it.



What should be in a monthly services statement?

If a property is separately metered for services and the tenant pays a landlord directly, the landlord must provide a monthly statement to the tenant with the following information:

- The names of the landlord and tenant;
- Physical address of property;

- The name, address and telephone number of each service provider;
- Previous and current month's meter readings;
- Actual consumption for each services and amounts charged per unit of consumption;
- Total payment due;
- Date of next meter reading for each service; and
- The amount of any arrears.

In Gauteng, a landlord is not allowed to make a profit on the provision of water and electricity to the tenant. The landlord must charge the tenant the exact amount for services consumed at the property if it is separately metered (see Regulation 13(1) of the Gauteng Unfair Practices Regulations).

2.3 Can a tenant transfer a municipal account into their own name?

There is no national law regarding municipal accounts and it very much depends on the policy of your particular service provider or municipality. If a tenant wants to this, they will normally need your consent to contract directly with the service provider. The Rental Housing Act and Gauteng Unfair Practices Regulations assumes that the tenant will receive your services through their landlord.

In Johannesburg it is no longer possible for a municipal account to be transferred into a tenant's name and for the tenant to pay the municipality or service provider directly. The City of Johannesburg does have the discretion to open tenant accounts for tenants who are registered indigents in terms of the Expanded Social Package, or who live in abandoned buildings.



The Siyasizana social package is a basket of benefits which the City allocates to citizens based on their level of poverty. It replaces the old City

of Johannesburg indigent subsidy system. The programme is for anyone earning less than R4 257.58 a month residing - as owner, tenant or lodger - on a property falling within the boundaries of Johannesburg, should register. People with different levels of need will qualify for different levels of subsidy and means that if you live on a formal property, you can qualify for discounts on the services the city charges you for, up to 100% for those with very low incomes.

You can register as a building, as a tenant or as even if you are homeless. When you register, you receive a printed confirmation that you've registered for the Expanded Social Package, showing the amount by which the bill for your property will be reduced because of this. Your landlord will also be notified on his or her bill that the property is registered for indigent benefits. How this changes your bill as a tenant is, for now, a matter between yourself and your landlord.

For large buildings with many low-income tenants, the building may have a building number on the ESP system which tenants can use to register.

For more information or to register for tenants, landlords in the inner city of Johannesburg, there are three places you can register:

- 61 Jorissen Street, Thuso House , Braamfontein
- South Hills, Region 9 People's Centre, 9 Geneva Road
- CJ Cronje Building, 80 Loveday Street, Johannesburg

Or you can contact the City of Johannesburg, Social Development Department: via the main desk on 011 407 688

2.4 What should I do if water or electricity gets cut off to my property?



Please note that a landlord may not cut off water or electricity to a tenants' unit without a court order (see section 16(hA) of the Rental Housing Act as well as Regulation 13(1) of the Gauteng Unfair Practices Regulations).

A utility service provider, such as City Power or Johannesburg Water, may not disconnect your water or electricity supply without first giving you notice of its intention to do so, and considering any representations (for example, communications, emails, letters, meetings etc) you might want to make about the proposed action. A water supplier must take into account your ability to pay for water services before disconnecting your supply (see section 4(3) of the Water Services Act). If you are concerned about your tenant's ability to pay for services then they should register as indigent (on the Expanded Social Package) in order to prove their inability to pay for services and avoid issues of non-payment.

2.5 What could be regarded as inappropriate behaviour from a landlord?

Sometimes you might do something (for example, cut off the water supply, conduct extensive renovations), or fail to do something (for example, maintain the property properly), that causes the rental property to deteriorate to the extent that it is no longer fit for occupation, or is in a state which significantly restricts the tenants' use or enjoyment of the property. These are considered unfair practices. An unfair practice is any infringement of the Gauteng Unfair Practices Regulations.



Some examples of unfair practices in the Gauteng Unfair Practices Regulations:

- Unfair discrimination against a prospective tenant when negotiating a lease, or a tenant during the term of a lease, on one or more of the following grounds: race, religion, gender, sex, pregnancy, marital status, sexual orientation, ethnic, or social origin, colour, age, disability, conscience, belief, culture, language and birth;
- Intimidating, discriminating or retaliating against a tenant for exercising their rights;
- Stopping a tenant from establishing or being a member of a tenants' committee;
- Searching the property or seizing possessions without a court order.

A full list of unfair practises in Gauteng can be found in SERI's guide to the Rental Housing Act and Unfair Practices Regulations.

2.6 What can be done if a tenant is behaving inappropriately/unfairly?

First you should try to talk to your tenant about the behaviour that is bothering you. It is best to do this as a first step, and not to threaten your tenant with cancelling your lease or anything else.

If the behaviour continues, you can write a formal letter of complaint to your tenant. This should set out exactly what the complaint is about, whether it contravenes the lease agreement, or house rules, and the amount of time you will give the tenant to fix the problem.

If the problem continues, you can approach the Gauteng Rental Housing Tribunal and request mediation or arbitration (which is free) or contact a lawyer.

2.7 What is a Rental Housing Tribunal?

In 1999, the Rental Housing Act introduced provincial dispute resolution bodies called Rental Housing Tribunals. The Gauteng Rental Housing Tribunal is located at the provincial department of housing and performs the following functions:

- resolves complaints through processes such as mediation and arbitration;
- offers advice on issues related to residential leases and rentals;
- provides consumer education which is important for informing people about their rights and duties as parties in the rental sector.

The Tribunal investigates a matter brought before it to find out if the problem is an unfair practice in terms of the Unfair Practices Regulations. It will establish whether the dispute can be resolved through mediation, or if a hearing should be conducted. A ruling by the Tribunal is similar to a Magistrate's Court order. The Tribunal has the power to summons a landlord or tenant to a hearing.

See the resources section at the end of this guide for the contact details of the Gauteng Rental Housing Tribunal.



Mediation

Mediation is a form of alternative dispute resolution (ADR) in which a neutral person i.e. someone who is not involved in the complaint helps people reach agreement or negotiate a settlement out of court. A mediator facilitates this process.



Arbitration

Arbitration is a form of ADR where parties to a dispute refer it to one or more persons to review the evidence and impose a decision that is legally binding and enforceable.

2.8 What happens if a landlord tries to evict a tenant when they have a complaint before the Rental Housing Tribunal?

If a tenant lodges a complaint with the Rental Housing Tribunal about an unfair practice, a landlord is not allowed to evict the tenant (even if you have obtained a court order) until the complaint has been ruled on, or until three months have passed, whichever comes first.

If it takes longer than three months to rule on the complaint, then you can apply for the tenant's eviction, but the tenant is entitled to go to court and tell the judge that there is a complaint against you that is pending with the Rental Housing Tribunal. The judge can then decide to suspend the eviction application until the Rental Housing Tribunal has made its ruling.

2.9 Is it possible for a tenant to stop paying rent to get the landlord to fix problems?

If a tenant has laid a complaint against you or written to you and you have not responded then the tenant can legally reduce their rent in proportion to the extent to which they have been denied the use of the property. This is called a remission of rent. Remitting of rent is, however, a drastic step. The loss of benefits must be substantial and serious in nature to justify doing so.

It is also important to note that the landlord and tenant can make an agreement about remittance of rent. Even if the lease provides that rent should be paid "without any deductions or abatements", a tenant would still be able to claim remittance in certain situations. When exactly this is possible should be checked with the Rental Tribunal or with a lawyer.

2.10 Can family or friends come and stay with your tenant?

This depends on the rules of the property. Some places do not allow anyone to stay over at all. Other places say that the tenant must ask for permission from the landlord. For a short time (maximum a week), it should not be an issue. For a longer time, it might be a problem. A tenant should make sure that the issue of visitors is included in the lease agreement before they move in. It should define if and for how long a tenant's friends or family are allowed to come and stay. The tenant should not allow more than the maximum number of people specified by the landlord and the lease to reside on the property permanently.

2.11 When can a tenant sublet the property?

Normally a lease agreement will state the maximum number of people who can live at the property, and will state that the property cannot be sublet. A tenant may not sublet the property, or any part of it, without the written consent of the landlord. This is the case even if the lease does not say anything about not subletting the property. However, you should not unreasonably withhold consent to the tenant to sublet the property.

2.12 What happens if a tenant cannot pay rent on time?

Section 9 (1) (5) (a) of Gauteng Unfair Practices Regulations states that if the tenant does not pay rent within 7 days of the due date, then they have technically broken the terms of the lease and the

landlord can cancel the lease immediately. The landlord is entitled to go to court or the Rental Housing Tribunal to ask for permission to sell the tenants' possessions in order to recover the unpaid rent.

It is very important to note that in terms of section 3(3)(a) of the Gauteng Unfair Practices Regulations, a landlord may not impose a penalty for late payment of rent, but can charge interest on the amounts outstanding.

2.13 Can the landlord increase rent during the lease?

Yes, if the lease includes the rate of increase of rent per year (generally about 10% per year is considered reasonable) then it is legal. You must give the tenant at least 2 months written notice of your intention to increase the rent (see Regulation 6(4) of the Unfair Practices Regulations). If the lease does not specify an amount or date for an increase, the landlord has to negotiate the increase with you and it should be "reasonable"

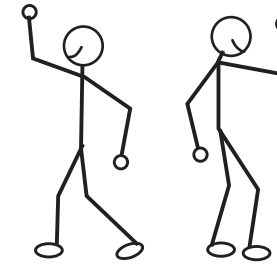
2.14 Can a tenant challenge unfair rent and service charge increases?

Yes. If they think that any service charge or rent increase is unfair, then a tenant can ask the Rental Housing Tribunal to reverse it. Until a decision is taken the tenant does not have to pay the increased charge while it is being challenged. However, if the complaint fails, then the tenant might have to make up the payments that they have missed while the complaint was being considered by the Tribunal.

You must provide your tenant with copies of municipal or service provider accounts if they ask you for them, in terms of Regulation 13(1)(g) of the Gauteng Unfair Practices Regulations.

Section 3

Ending the landlord-tenant relationship



3.1 What is cancellation of a lease?

A lease agreement can be *cancelled* if the landlord or the tenant has breached (broken) an important part of the agreement (for example, if the landlord does not perform essential maintenance or the tenant does not pay the rent). The lease will normally contain a cancellation clause, which will tell you –

- How long the landlord or tenant has to reverse the breach (violation) after they have been given notice of it; and
- When the agreement will come to an end if the breach is not reversed within the given period.

If the period given to reverse the breach or the period after which time the lease comes to an end (if the breach is not reversed) is not specified in the lease, then these notice periods must be reasonable.

'Reasonable' in the context of notice periods for cancellation would depend on the nature of the breach, how seriously it affects the landlord or tenant, and the amount of time it would actually take

to fix the breach (for example, if something breaks in the property and it will take a week for someone to repair it). In Gauteng, if the tenant fails to pay rent after 7 days of the due date, then the lease can be cancelled immediately after this period is up.

It is possible that the lease says that some breaches are so serious that the landlord or tenant can cancel the lease without giving the other party any notice to reverse the breach.

3.2 What is termination of a lease?

A lease agreement can also be *terminated*. Most often, a lease terminates when the lease period agreed in advance comes to an end. Normally it is a date set out in a fixed-term lease.

A lease can also be terminated when the landlord or the tenant gives “reasonable” notice that they want the agreement to come to an end. Reasonable notice is usually the notice agreed to in the lease, but if no period is agreed to in the lease, a good general rule is that a reasonable notice period is at least one month, or one month for every year that the lease has been running, whichever is the longer.

If the tenant wants to terminate their lease before it is due to expire, then you may ask the tenant to reimburse you for finding a new tenant or for the amount of rent due between the period they wish to terminate the lease, and the actual date of expiry on the lease. If you want to terminate the lease then you may be liable for some of the costs, however, whether or not you will be liable, and how much you will be liable for, depends on the facts of the case and what the lease says.

You should make sure there is a termination clause in your lease that is fair to you and the tenant.

3.3 Can a tenant challenge an unfair cancellation or termination of their lease?

Yes. Section 4(5)(c) of the Rental Housing Act says that a landlord cannot bring a lease to an end if to do so would amount to an “unfair practice”, or would be unreasonable, unjust or inequitable. If a tenant feels that you have ended your lease in this way, then they can make a complaint to the Rental Housing Tribunal.

The Rental Housing Tribunal also has the power to set aside (reverse) the termination of a lease if it was unfair. However, throughout this process, a tenant must continue to pay their rent and you must both do everything else that is required of you in terms of the lease.

3.4 What if the lease ends but the tenant stays in the property?

If a lease ends but the tenant remains in the property with the “express or tacit consent” of the landlord (meaning that the landlord agrees to this, either by stating it or by acknowledging it by not trying to evict the tenant and continuing to receive rent), then the law says that a new periodic lease (for example, a month to month lease) is entered into, with the same terms and conditions as the expired lease. One month’s written notice must be given of the intention of either the landlord or tenant to terminate this periodic lease.

If the lease ends and the landlord gives the tenant notice to vacate the property, and they do not leave by this date, then they may become an “unlawful occupier” and you could take the tenant to court and apply for an eviction order.

3.5 May a landlord forcibly remove a tenant from the property?

No. This would be unlawful. An illegal eviction is any action taken to remove someone from a property without following the proper process. For an eviction to be legal, a court needs to grant an eviction order after “hearing all the relevant circumstances”.

There are also a number of situations which can be described as a “constructive eviction” and which are unlawful and considered to be ways in which tenants are “forced” out. The following actions are considered illegal:

- If you change the locks while the tenants are out.
- If you intimidate or threaten your tenants to move out the property.
- If you disconnect services at the property without a court order.

According to the Rental Housing Act, if the landlord does any of the above, you could be found guilty of an offence and made to pay a fine. A tenant could also go to court to reverse the eviction and get back into the property.

3.6 How does the legal eviction process work?

An eviction can only take place with a court order. A court order can be obtained by the landlord if they have cancelled or terminated the lease (after giving due notice) and the tenant remains in the property.

The process works as follows:

- The landlord would launch an eviction application in the High Court in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE Act). A summons (a legal demand for someone to be in court at a specific time and

day so that they can respond to the charge) or a notice of motion is served on the tenant.

- The tenant must respond to a summons within three days, using the “Notice of intention to defend” that is printed at the back of the summons.
- After this has been submitted to the court, a hearing will take place where the landlord and the tenant will explain the situation to the court, preferably through lawyers.
- The court may then issue an eviction order. If they do, the landlord must supplement the eviction order with a warrant of eviction, stamped by the court.
- The court gives two dates: the first date is the date when the tenant must vacate the property. The second date is the date the sheriff can forcibly remove the tenant should they fail to leave by the first date.

3.7 What happens if a tenant permanently vacates the property before the lease is up?

If the tenant permanently vacates (leave) the property before the lease expires and stops paying rent (without giving notice), then the lease effectively expires on the date on which the tenant permanently vacated the property. As the landlord you can claim damages from the tenant for breaking the terms of the lease.

3.8 Can someone else take over the property if the tenant decides to move out early?

Not unless you have agreed to sublet the property but a new tenant can enter into their own lease agreement.

3.9 What should happen when the lease ends and the tenant wants to move out?

Three days before the lease expires, the landlord and tenant must together inspect the property (at a time convenient to both of you) to assess if there was any damage caused during the tenant's occupation. If there is no damage, the deposit must be refunded in full within 7 days of the end of the lease.

3.10 What if the landlord fails to inspect the property?

If you refuse or fail to inspect the property when you should, it means that they have effectively accepted that the property is in a "good and proper state of repair" and then the landlord cannot make any claims against the tenant. The deposit must be refunded in full within 7 days of the end of the lease.

3.11 What if a tenant does not inspect the property with the landlord?

If the tenant does not respond to the landlord's request to inspect the property together, the landlord must inspect the dwelling within 7 days of the expiration of the lease, and can deduct from your deposit the "reasonable cost" of fixing any damage caused. The balance of the deposit, if any, must then be refunded to the tenant no later than 21 days after the lease expired. You must allow the tenant to inspect the relevant receipts, as proof of the costs incurred.

3.12 What happens if there has been damage to the property during the lease period?

If during the inspection it is found that there is damage that a tenant must pay for, then the landlord may use the tenant's deposit towards the "reasonable cost" of repairing the damage, but the landlord must allow the tenant to inspect the receipts as proof of any costs incurred.

The balance (remainder) of the deposit, if any, must be refunded to the tenant by the landlord no later than 14 days after the property has been 'handed back' to the landlord.

3.13 What happens if there is no damage to the property?

If there is no damage to the property then no money is due to you in terms of the lease, and the full deposit must be refunded by the landlord within 7 days of the end of the lease.

Useful organisations and online resources

Organisations

Gauteng Rental Housing Tribunal

If you need the help of the Gauteng Rental Housing Tribunal, you will need to lodge a complaint in writing. The Tribunal is located at:

Ten Sixty Six Building
14th Floor, 35 Pritchard Street (Corner Harrison Street)
Johannesburg

Tel: (011) 630 5035

Centre for Applied Legal Studies (CALS)

The Centre for Applied Legal Studies (CALS) is a public interest law organisation based at the University of the Witwatersrand.

CALS' website is at <http://www.wits.ac.za/academic/clm/law/cals/16858/home.html> and its office is located at:

DJ du Plessis Building
West Campus
University of the Witwatersrand
Braamfontein

Tel: (011) 717 8600

Legal Aid South Africa

Legal Aid SA provides free legal advice and assistance to those who qualify, and is mandated by the South African Constitution. The organisation provides legal advice (over the phone or at their office) and will assist with legal representation in eviction and other housing-related cases.

To qualify you will need to complete a means test, which involves filling out a form detailing how much you earn per month. If you are an employed, you must earn less than R5 500 per month (after tax). If you live in a household with other people, the total household income should not be more than R6 000 per month (after tax). If you are unemployed, you will require an affidavit from the police stating this. People living on state grants and the elderly automatically qualify for legal aid.

The Legal Aid Advice Line toll free number is 0800 110 110. The organisation's website is at <http://www.legal-aid.co.za>.

The Johannesburg Justice Centre office is located at:

41 Fox Street
Edura House
Johannesburg 2000
Tel: (011) 870 1480

There are a number of other Legal Aid Justice Centres located around Gauteng.

Legal Resources Centre (LRC)

The Legal Resources Centre (LRC) is a human rights organisation with offices around the country. The LRC's website is at www.lrc.org.za and its Johannesburg office is located at:

15th and 16th Floor, Bram Fischer Towers
20 Albert Street
Marshalltown
Johannesburg 2000
Tel: (011) 836 9831

The LRC assesses matters on a case-by-case basis, and will provide assistance in rental housing cases that are in the public interest.

ProBono.Org

ProBono.Org is a legal NGO that works with the private legal profession to provide pro bono legal services to the poor. ProBono.Org runs a Housing Legal Clinic on Fridays from 09:00 to 13:00 where attorneys are available to provide:

- assistance and representation in respect of complex Rental Housing Tribunal hearings; and
- facilitate mediation between the tenants and landlord and/or estate agents or managing agent.

ProBono.Org's website is at <http://www.probono.org.za> and its office is located at:

1st Floor West Wing
Constitution Hill
1 Kotze Street
Braamfontein 2001
Tel: (011) 339 6080

Socio-Economic Rights Institute of South Africa (SERI)

SERI is a public interest law organisation providing socio-economic rights assistance to individuals, communities and social movements. SERI provides legal advice and litigation assistance to the poor and marginalised facing evictions, and in rental housing cases that are in the public interest.

SERI conducts consultations with potential new clients on weekdays from 09h00 to 13h00.

SERI's website is <http://www.seri-sa.org> and its office is located at:

6th floor Aspern House
54 De Korte Stree
Braamfontein 2001
Tel: (011) 356 5860

Online resources

Rental Housing Act 50 of 1999

<http://www.acts.co.za/rental-housing-act-1999/>

Tenant and Landlord in South Africa by Dr Sayed Iqbal Mohamed (2nd edition, 2010)

<http://www.legal-aid.co.za/wp-content/uploads/2012/05/Tenant-Landlord-in-South-Africa-2nd-Edition.pdf>

Advice on Renting, Property24

<http://www.property24.com/articles/advice/renting>

Frequently Asked Questions for Tenants (Western Cape Rental Housing Tribunal)

http://www.westerncape.gov.za/eng/pubs/public_info/F/116621