



# **Tenant and Landlord in South Africa**

A Guide to the Rights, Duties and  
Responsibilities of Tenant and  
Landlord of Residential Dwellings

Sayed-Iqbal Mohamed  
Organisation of Civic Rights



# REVIEW ON “TENANT AND LANDLORD IN SOUTH AFRICA” BY SAYED-IQBAL MOHAMED

## FOREWARD by Justice Leona V Theron

“The handbook by Sayed Iqbal Mohamed, in the first instance is a useful guide to the legal practitioner, in that it states the law succinctly. Also, the contents of the book are indispensable to both landlords and tenants, in that the prevailing law is simplified, yet accurate.”

**Geoff Abrahams**  
Civil Court Magistrate

“From the time I was appointed as chairperson of KwaZulu Natal Rental Housing Tribunal, I have always been concerned about the lack of reference material for the legal practitioner at large. Iqbal’s book is therefore the solution I was looking for and it reflects the author’s experience on the subject matter that stretches for more than 20 years. It is a book I recommend to legal practitioners, students and the public.”

**Comfort Ngidi**  
Attorney; Chairperson, KZN Rental Housing Tribunal

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IOL: Tenant/landlord law explained by new book  
**Tenant/landlord law explained by new book**  
**Veven Bisetty**  
July 12 2004 at 02:20PM

Do you know what tacit hypothec means? As a tenant, you should know.

It means that the law gives your landlord a powerful weapon against you if you default on your rent, or even if you're slightly in arrears with your payments - in effect giving the landlord rights to seize your goods in his dwelling.

Do you know what to do when your landlord or his agent evicts you without legal process and do you know the legal process to take when your landlord seizes your goods without a court order?

What about tenants living in sectional title schemes? Are you obliged to follow the house rules? Can a body corporate interview prospective tenants or restrict the number of occupants? How about preventing visitors or place a time restriction regarding visitation?

'This book will serve as a self-help tool for both tenants and landlords'

No. No and NO. A body corporate cannot restrict the number of occupants and no, it cannot prevent visitors or place a time restriction regarding visitation and no, it cannot disconnect the electricity and water supply or lock out a tenant.

Something that many of us are ignorant of. Walk into any apartment block in Durban and check out the notice board. The rules prevent you from doing many things, including restricting the number of visitors you can have.

These, and other bits of useful information, are contained in a new book dealing with the rights, duties and responsibilities of tenants and landlords of residential dwellings, titled *Tenant and Landlord in South Africa*, and published by the Organisation of Civic Rights in Durban.

Its author, Sayed Iqbal Mohamed, is the founding member of the OCR, which was formed 1984. If anyone knows the laws and rights of tenants and landlords, it's Mohamed. At present he serves as a member of the KwaZulu-Natal Housing Tribunal.

The book deals with everything from how to challenge an eviction and locking-out of a tenant for rent arrears, to tenants claiming for damages for being locked out.

In its foreword, Durban judge Leona Theron says that working for the past 19 years with tenants, "it is indeed fitting that the OCR should publish a handbook on the rights, duties and obligations of tenants and landlords".

"This book will serve as a self-help tool for both tenants and landlords and will certainly have a great impact on its target audience.

"It will be particularly useful to tenants who, because of a lack of finances, are unable to afford professional legal services. To this end the language used in the handbook is simple and ought to be easily understood.

"Mohamed must be commended for breaking down this complex area of law, making it accessible to the large community of South African tenants, many of whom are uneducated," Theron said.

Mohamed says the book is the first that breaks away from the legal jargon that makes this aspect of the law inaccessible to the lay person.

The income raised from the book will go to the OCR, which is involved in human rights issues, particularly tenants' rights, inner city redevelopment, sectional title matters and anti-crime projects.

The book is available now, directly from the OCR at PO Box 4787, Durban 4000, at R70 including postage. OCR can be phoned at 031 304 6451.

***This article was originally published on page 5 of Daily News on July 12, 2004***

**Landlord and tenant**  
**GhostDigest – conveyancing news and views**

12 August 2004

A new book, *Tenant And Landlord In South Africa*, by Sayed Iqbal Mohamed and published by the Organisation of Civic Rights (OCR) in Durban, should provide the answer to this and many other tenant-landlord issues such as:

Tenants living in sectional title schemes;

House rules;

The powers of the body corporate in interviewing prospective tenants or its right to restrict the number of occupants;

Visitation restrictions.

Durban judge Leona Theron says that, "This book will serve as a self-help tool for both tenants and landlords and will certainly have a great impact on its target audience."

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**Tenants, landlords and the law**  
**Legalbrief Today**

A new book dealing with the rights, duties and responsibilities of tenants and landlords of residential dwellings, titled *Tenant and Landlord in South Africa*, has been published by the Organisation of Civic Rights in Durban, according to a report in the Daily News. Its author, Sayed Iqbal Mohamed, is the founding member of the OCR, formed 1984. At present he serves as a member of the KwaZulu-Natal Housing Tribunal. The book deals with everything from how to challenge an eviction and locking-out of a tenant for rent arrears, to tenants claiming for damages for being locked out.

Read the original report (Daily News)



# TENANT AND LANDLORD IN SOUTH AFRICA

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## A GUIDE TO THE RIGHTS, DUTIES AND RESPONSIBILITIES OF TENANT AND LANDLORD OF RESIDENTIAL DWELLINGS WITH A COPY OF A STANDARD LEASE AGREEMENT, SPECIMEN LETTERS AND REFERENCE TO THE RENTAL HOUSING ACT 50 OF 1999

### INTRODUCTION

This handbook by the Organisation of Civic Rights (OCR) is intended as a guide to tenants, landlords and all those who represent them. The OCR has been working with tenants for 19 years and understands the hardship experienced by tenants at the hands of unscrupulous landlords. Landlords often abuse tenants. They disconnect electricity and water supplies, lockout their families, refuse to carry out necessary repairs, charge high rentals and consider security deposits to be non-refundable.

Rights, off course, do not exist by itself. The OCR therefore informs tenants of their duties, responsibilities or obligations – things they need to do in respect of the rights of landlords. This prevents landlords from taking legal action and also reminds tenants that they are obliged to respect and look after the property they occupy. There are tenants who violate and abuse the rights of their landlords, e.g. cause damage to the property leased, behave abusively or have no intention of keeping to the agreement.

Since 1994 the OCR engaged the national government to introduce a new law that would help protect the rights of tenants and landlords and for them to fulfil their responsibilities. A law that would improve the living conditions of tenants and protect them from the abuse of unscrupulous landlords. In August 2000 the government introduced this new law in all the provinces, called the Rental Housing Act 50 of 1999. A great part of this new law contains OCR's concerns and suggestions that includes overcrowding, security deposits, subsidy for tenants who are unable to afford the rentals during their tenancy, arbitrary eviction, exorbitant rentals, discrimination and invasion of privacy by unscrupulous landlords, unacceptable living conditions, illegal lockouts, recognition of tenants' committees and the right to bring under review proceedings of the Rental Housing Tribunal before the High court.

For the first time tenants living in outbuildings, backyard shacks or renting any type of residential dwelling<sup>1</sup> will be able to challenge unscrupulous landlords. In fact 8,8 million people living in rented dwellings countrywide will be protected legally. No longer can a landlord disconnect water or electricity illegally or lockout a tenant without being challenged. Landlords can also take action against tenants who overcrowd, refuse to vacate the dwelling after the lease has expired or tenants who breach their lease contract (e.g. non-payment or late payment of rentals).

## **Historical Development**

### **Common Law**

A brief comment on the common law and previous rents legislation will provide an understanding of the need for a comprehensive legislation governing the relationship between landlord and tenant and the positive impact it envisages to have on the rental housing market.

Some three and half centuries ago, Jan Van Riebeeck brought with him the Roman-Dutch law, which became the basis of our common law. The growth of the common law was the result of our courts' application and interpretation of Jan Van Riebeeck's law of Holland and later the English law. The courts' judgment (precedents) became part of our common law as the need arose to resolve matters in response to the ever-changing needs of society.

### **Statutory Law**

#### **1. The Rents Legislation**

On the other hand, the South African parliament made law called statutes ("statutory" law) for various reasons. Common law is therefore that part of the law not found in "statutory" law. The rents legislation for instance were statutory laws passed by Parliament in 1920 with many amendments or changes into the 1990s. The rents legislation modelled on English law was also in response to the needs of a changing society brought about by the two World Wars and initially intended as temporary measures. Both "first" and "second" world countries passed laws to protect tenants from unscrupulous landlords who took advantage of the acute housing shortage. War Measure 89 of 1942 was enacted to protect business tenants but was abolished in 1980.

Landlords saw the rent control law as an "interference" of their common law rights. For instance, at common law a landlord could terminate a month-to-month lease by

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<sup>1</sup> Dwelling includes any house, hostel room, hut, shack, flat, apartment, room, outbuilding, garage.

giving one month's notice. Our courts clarified the one-month's notice period to be a calendar month's notice to be given not later than the first day of the month to be effective for that month. The Rent Control Act, 1976 placed restrictions on the landlord regarding the notice to vacate: three month's notice if the dwelling was required for personal occupation; six month's notice if required for renovation (lease suspended) with the tenant having the first right of re-occupying the dwelling; twelve month's notice if the landlord intended to demolish the dwelling. The landlord also had to satisfy the High court that such demolition or reconstruction was in the public's interest and that the Minister of Housing granted such permission.

Between 1978 and 1980, a large number of dwellings were phased out of rent control because of vigorous campaigns by landlords' representatives who had considerable support in the apartheid parliament. Consequently, rent control applied to dwellings built and first occupied on or before October 20, 1949. Any tenant, regardless of income, who occupied this category of dwelling was "protected" by the provisions of the Rent Control Act. As for dwellings that were phased out of rent control a tenant also enjoyed the "protection" of the rent control legislation if he or she was in occupation at the time the dwelling was de-controlled and his or her income was within a specific income category (amended regularly). The income of a tenant however was not considered in determining the rent increase of rent-controlled dwellings. In reality, a pensioner ended up paying rentals similar to that paid by a millionaire in the same building.

Rent control did not apply to any dwelling built after the major phasing out periods (1978-1980). All dwellings in "white" residential areas were eventually phased out of rent control by the early 1990s. Rent control as argued by the powerful property lobbyists, supposed to have stifled private rental development. Surprisingly, this major change, that of bringing dwellings out of rent control, did not lead to the building of more rental dwellings or any improvement in the private sector rental market.

## 2. The Rental Housing Act 50 of 1999

The Organisation of Civic Rights (OCR) championed the cause of *bona fide* tenants and succeeded in a High Court application to have rent boards reintroduced in 1986 when it mysteriously disappeared nationally due to an administrative "error". The OCR also had rent control reintroduced to certain buildings in Warwick Avenue, Durban in 1989 due to similar mysterious circumstances. It engaged the apartheid government to amend the rent control legislation to have it extended to all dwellings.

It lobbied with the Minister of Housing, the late Mr. Joe Slovo, who was the first minister in the democratically elected government of national unity.

After extensive consultation nationally and internationally, made possible through ASHOKA (USA) and a funding partnership with MISEREOR (Germany), the OCR proposed the abolition of rent control and submitted detailed suggestions for a new law to Minister Sankie Mthembi-Mahanyele, successor to late Mr. Slovo. By this time OCR was asked to participate in an international workshop on tenants' matters in London and was the only civic organisation to sit on the national task team to advise the Housing Minister on a draft Rental Housing Bill.

In bringing out this handbook, the information is based on 19 years of grassroots' experience and is therefore well informed. The OCR is grateful to ASHOKA and MISEREOR for their support to the OCR. Special thanks to all those individuals and families OCR represented over the years who provided the stimulation and encouragement to understand the law and moral values associated with tenants and landlords, their rights, duties and obligations.



## CHAPTER 1

### 1. THE RENTAL HOUSING ACT (RHA)<sup>2</sup>, NO. 50 OF 1999

**What is this Act about?**

- It is a law passed by Parliament for landlords and tenants of residential dwellings.
- It was published on December 15, 1999 and became law on August 01, 2000.
- The RHA informs both landlord and tenant about their rights, duties and responsibilities when they enter into a lease agreement (verbal or written).
- It tells both landlords and tenants how to behave and conduct themselves, what they **must do**, what they **cannot do** and what would happen if they “**violate**” each others rights or fail to carry out their duties.
- The common law rights and duties continue to exist but the RHA changed some aspects of it.
- The RHA protects both tenants and landlords from exploiting each other and against other forms of unfair practice.

**Does the RHA apply to Business / Commercial Property?**

No.

**Does the RHA apply to Residential Dwelling?**

It applies to all residential dwellings – dwellings used for rental housing purposes.

**What does the RHA say about a dwelling?**

A dwelling includes any house, hostel room, hut, shack, flat, apartment, room, outbuilding, garage or similar structure a landlord leases to a tenant to live in. A storeroom, outbuilding, garage or demarcated parking space can form part of the leased dwelling if this was agreed between the landlord and tenant.

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<sup>2</sup> RHA – for the sake of convenience, the Rental Housing Act, No. 50 of 1999 will be referred to as RHA.

**Can a Municipality or Provincial Government be considered a Landlord?**

Yes!

Owners of private dwelling, municipalities and provincial governments – any person or entity (e.g. Close Corporation, Company) who leases a dwelling to a tenant is a landlord.

**What happens when a Tenant or a Landlord breaks the Law in terms of the RHA or their relationship breaks down?**

They can contact the Rental Housing Tribunal for advice; file a complaint so that any dispute or conflict regarding an unfair practice or matters affecting the relationship between parties in respect of their lease contract can be resolved.

## **THE RENT CONTROL ACT <> THE RENTAL HOUSING ACT**

**Now that there is a new law, the Rental Housing Act 50 of 1999, does the provisions of the Rent Control Act 80 of 1976, as amended, still apply?**

No! On 31 July 2003 the protection of tenants living in a dwelling (which includes a home, flat or garage) that was subject to rent control ended.

*In Summary:* the Rental Housing Act is the law that deals with landlord-tenant matters in respect of rented residential dwellings. The Rental Housing Tribunal is the body that has the powers to resolve complaints and to instruct and guide parties to do what is required of them under the Act.

## 2. WHAT ARE REGULATIONS?

The Rental Housing Act comes from national government. In each province, the Minister of Housing may set up a Rental Housing Tribunal. In addition to the Rental Housing Act the provincial Minister must tell landlords and tenants about the procedure and also what their rights, duties and obligations are. This is done by the Minister through regulations. The regulations therefore contain procedures and matters relating to problems or disputes in respect of unfair practices.

The Rental Housing Act is like the engine of a bus, the Regulations the body and the Tribunal its wheels.

### 2.1. The Rental Housing Procedures include: -

- How the Tribunal must function?
- How to file a complaint?
- A copy of the complaint form, summons and other forms and certificates to be used are part of the Regulations.
- Duties of the staff and the members of the Tribunal
- How many days are needed to summon a party or witness.
- What fines or penalties are to be paid, and / or the period of imprisonment when a party ignores a ruling (decision or “judgment”) of the Tribunal.
- Mediation and hearing procedures.

### 2.2. Unfair Practices

The RHA states some of the unfair practices and what the landlord and tenant must do or not do.

**What is an Unfair Practice?**

Any action, behaviour or conduct by one party that affects the rights of the other party.

**Unfair practice may relate to: -**

- the changing of locks;
- deposits;
- damage to property;
- demolitions and conversions;
- eviction;
- forced entry and obstruction of entry;
- House Rules, subject to the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), where applicable;
- intimidation;
- issuing of receipts;
- tenants committees;
- municipal services;
- nuisances;
- overcrowding and health matters;
- tenant activities;
- maintenance;
- reconstruction or refurbishment work.

Further explanations regarding unfair practice or additional categories may be found in the Regulations.

### 3. THE RENTAL HOUSING TRIBUNAL

#### What is the Rental Housing Tribunal?

- It is an independent body appointed by the Provincial Minister of Housing to resolve disputes between landlords and tenants of residential dwellings.
- Its members, between 3 to 5, are appointed to serve a term of up to three years, that could be extended to a further three years.
- The Tribunal also has staff that includes inspectors, technical advisors and administrative support staff.

#### What are the Powers of the Tribunal?

- It can summons a party to a hearing or mediation.
- Its ruling is like the judgment of a Magistrate's Court.
- It can impose a fine and / or imprisonment.

#### How does a Landlord or Tenant file a Complaint?

- The complainant fills in a complaint form. This can be done in one of the following ways:
  - at the Rental Housing Tribunal office
  - faxed to the office
  - at the Rental Housing Information Office which a local authority may establish
  - by other means allowed by the Rental Housing Tribunal (e.g. e-mail)
- The case manager or the staff in charge opens a file and enters the names of the complainant and the respondent into a register.
- A summary of the nature of the complaint and a file (case) number are entered into the register.

#### What happens after a Complaint is filed?

- A letter is sent to parties regarding the complaint filed.
- Parties are also informed in writing (by way of summons) of the date, time and place the case is to be mediated or heard. A copy of the complaint sheet is attached.
- Any information required or persons (witnesses) are also summoned.
- The respondent can also file a complaint against the complainant ("counter-claim").



**What are some of the matters the Tribunal can deal with?**

- i) It has the authority to deal with disputes, complaints or problems that include: -
  - non-payment of rentals
  - refund of security deposit
  - invasion of tenant's privacy (including family members and visitors)
  - overcrowding
  - determination of fair rentals
  - unlawful seizure of tenant's goods
  - discrimination by landlord against a prospective tenant
  - receipts not issued
  - tenant conducting a nuisance
  - maintenance and repairs
  - eviction
  - illegal lockout or disconnection of services.
- ii) Provide advice and information
- iii) Make a ruling that is just and fair to: -
  - end any unfair practice
  - compel a landlord or tenant to obey a provision of the regulations relating to unfair practice
- iv) Where any law is broken, refer the matter to the appropriate body for investigation

**Do Parties have to Pay any Fee?**

No! There is no cost involved for either the complainant or the respondent from the time a complaint is filed to the end of a mediation or hearing.

**Can a Complainant or Respondent have someone to represent him or her?**

Anyone, not necessarily a lawyer, can represent a complainant or a respondent at a hearing.

**Mandate or Letter  
Authorising  
Representation**

A person who represents a group of tenants or landlords should present the Tribunal with a mandate or a letter signed by the persons who are to be represented. It should also help if the mandate or letter indicates what decision the representative or spokesperson can make to resolve the complaint.

However, if evidence is required, the Tribunal can and will ask for the complainant or respondent or both to be present.

**What happens at the  
Tribunal on the day of  
the Mediation or  
Hearing?**

***If it is a MEDIATION: -***

- i) A mediator together with the complainant and respondent sign an attendance register.
- ii) Parties, including the mediator sign a Confidentiality Agreement after the mediator explains that whatever is discussed remains between the parties. The mediator does not disclose whatever is discussed to the Tribunal. This is important because if the mediation fails, the dispute is referred to the Tribunal for a hearing.
- iii) The mediator explains his or her role, that would include the following: -
  - that the mediator does not have powers to make a ruling
  - does not take sides but is there to help parties to find a solution
  - advise parties about the law relating to the dispute
  - a Mediation Agreement is signed by the parties and the mediator when a dispute is settled
  - parties are given copies of the Mediation Agreement.
- iv) Parties are given copies of the Confidentiality Agreement.

- v) At the conclusion of a successful mediation, parties could ask for the agreement to be made a ruling of the Tribunal. Parties could also reach agreement on one or more aspect of their disputes and refer to the Tribunal the ones they failed to resolve.

***If it is a HEARING: -***

- i) At least 3 members of the Tribunal must be present for a hearing, one member must be the Chairperson of the Tribunal or the Deputy Chairperson.
- ii) Parties together with the Tribunal members sign an attendance register.
- iii) The Chairperson explains to the parties about the procedure, that includes: -
- The recording of the proceedings.
  - Taking the oath or an affirmation.
  - The parties will be given the opportunity to state their side of the case (give evidence).
  - One party has the right to ask questions after evidence is given by the other (“cross examinations”).
  - Tribunal members may ask questions of the parties.
  - Witnesses are allowed to give evidence
  - Any inspection report regarding the state of the dwelling will be discussed.
  - The Tribunal together with the parties may inspect the dwelling.
  - The Tribunal will then adjourn to examine the evidence and thereafter give its ruling.
  - The ruling may be given at the hearing on the day.

## **Ruling of the Tribunal**

To make a decision (ruling), members of the Tribunal must take into account the following in terms of s 13(6)(a), (b), (c), (d) and (e): -

- Unfair practice regulations
- Provisions of the lease
- The common law (if a particular matter is not addressed in the regulations or a lease)
- National housing policy and national housing programmes
- The need to find a solution in a practicable and equitable manner.

In addition to the above five major factors, the Tribunal may be required from time to time, to consider other factors eg. a decision by the Supreme Court of Appeal.

## **General Remarks regarding Mediation / Hearing:**

Parties to a mediation or hearing: -

- have the right to an interpreter
- members of the Tribunal must ensure that parties are given the opportunity to state their case
- any points of objection to the hearing or against a member should be brought to the Tribunal's attention before the hearing starts. Example, a respondent draws the Tribunal's attention that the dispute relates to a business premises and, as such, the Tribunal does not have powers (jurisdiction) to hear the matter.
- Members of the Tribunal or the mediator must not hold discussions with any one party or travel with any one party in the absence of the other.

Each provincial Rental Housing Tribunal may have its own approach and may not necessarily follow the procedures stated above.

## CHAPTER 2

### RIGHTS, DUTIES AND OBLIGATIONS OF LANDLORD AND TENANT

#### ENTERING INTO THE LEASE<sup>3</sup>

##### What is a Lease?

It is a contract between the landlord and the tenant to allow the tenant temporary use and enjoyment of the dwelling. Parties have to agree on the rental to be paid in respect of the dwelling let.

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**Without a rental agreement, there is no lease contract.**  
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A lease can be oral (verbal) or in writing. However, the landlord must reduce the lease to writing should the tenant request in terms of section 5 (2).

A lease cannot be changed while it is in use, unless both the landlord and tenant agree to any change:

The tenant cannot, for example, refuse to pay water charges when the rental agreement was that the tenant will pay a monthly rental of R500.00 plus additional charges of R50.00 for water consumption.

Similarly, the landlord cannot force the tenant to pay additional charges for water if the rental agreement was that water charges were included in the monthly rental of R500.00.

<sup>3</sup> s5 – provisions pertaining to leases



**What are the requirements of the Rental Housing Act Regarding Leases?**

In addition to important information that is a part of a lease contract, the Rental Housing Act requires tenant and landlord to include specific information and imposes certain duties. These cannot be negotiated or left out.

**1. Written and Oral (Verbal) Lease**

*Inspection:* Joint inspection by both parties before the tenant takes occupation and within three days before the tenant moves out.

*Receipts:* The landlord must give the tenant written receipts for all payments he or she receives from the tenant, including the payment of deposit.

*Deposit:* The tenant has to pay a deposit if this was agreed between the tenant and landlord. The deposit must be paid before the tenant takes occupation and the landlord has to invest the deposit in an interest bearing account.

*Breach:* In respect of the tenant moving out of the dwelling before the lease period is over, the lease is deemed to have ended when the landlord realises that the tenant is no longer in occupation. The landlord can also take legal action against the tenant for breaking the lease, ie. moving out before the lease period ended or without a proper notice (a calendar month's notice in the case of a month-to-month periodic lease).

*Renewal of lease:* When a lease for a fixed period expires, the tenant is required to move out. However, a new lease comes into being when the tenant continues to occupy the dwelling, either with the landlord's clear and direct (express) consent or where the landlord does not object to accepting the rentals while the tenant remains in occupation (tacit acceptance). Both parties, in this instance, have entered into a periodic lease on the same terms and conditions of the expired lease.

## 2. Written Lease

2.1. In addition to the requirements above a written lease must include the following information: -

- the names of the tenant and the landlord
- the dwelling to be occupied by the tenant must be described (e.g. a house, room, outbuilding, garage).
- the rental to be paid
- any reasonable increase
- the amount of deposit if any
- any charges (e.g. water, electricity)
- the lease period (e.g. monthly, 6 months or 3 years)
- the duties of the tenant and the landlord
- the rental period (eg. monthly, weekly, daily, yearly)
- the notice period for terminating the lease if the lease period is not stated.

## GOODWILL OR "KEY" MONEY

It is "illegal" for a landlord, supervisor or managing agent to require a prospective tenant to pay a "bonus" commonly called "key-money". This amount is paid, in addition to the rental and security deposit. This form of exploitation has become quite common in South Africa and like the United States of America, it is the result of the acute housing shortage.

Through this exploitative practice the landlord, supervisor or managing agent gives preference to a prospective tenant who is able to pay the "bonus" or "premium". A receipt is not issued and the amount usually is not refunded.

**“Goodwill” however should not be confused with security deposit.**

## INSPECTION AND INVENTORY

Before taking occupation of the dwelling, the tenant and the landlord must inspect the dwelling [s5(3)(e)]. This inspection allows the parties, as they walk through the dwelling, to list any defect or damage that the landlord has to repair.

The list of defects or damage must be attached to a written lease [s5(7)]. Where an oral lease is entered into, it would be advisable for both parties to sign the list and to have the signed copies in their possession.

**The inspection or inventory list is very important because: -**

- It is proof of the landlord's duty to carry out the repairs needed or put right any damage.
- When vacating, the tenant's deposit is not withheld for defects or damage that the landlord was required to repair.
- The landlord can hold the tenant responsible for any defect or damage caused by the tenant, the tenant's visitor or household member [s4(5)(e)].
- The landlord cannot hold the tenant liable for any damage if he or she fails to inspect the dwelling with the tenant [s5(3)(j)] before the tenant occupies the dwelling and jointly inspects it three days before the lease expires.
- In the event of damage caused by the tenant, the landlord can use the deposit and the accrued interest for the cost of repairs [s5(g)].

It is therefore in the tenant's interest to carry out any repair he or she is responsible for. The rights and duties of the tenant and the landlord are protected when joint inspections are carried out at the beginning and at the end of the lease period.

## DEPOSIT

The landlord is allowed deposit from the tenant. The deposit must be paid before the tenant takes occupation.

**What amount is to be paid?**

The amount to be paid depends on the agreement between the landlord and tenant. It could be an amount equal to one month's rental or any amount agreed upon.

**What must the landlord do when he or she receives a deposit?**

1. Give the tenant a receipt in which the following must be written: -
  - Date
  - For deposit and the amount
  - Tenant's name, address of the dwelling for which deposit is paid, the type of dwelling (eg. flat, room, garage, cottage)
2. Invest the deposit with a bank in an interest bearing account.
3. Provide the tenant with written proof when the tenant makes request, of accrued interest.

01 / 02 / 03

**Name:** Ms. Sue Mkize

**Address:** Flat 6, High Court Mansions, 89 Smith Street,  
Cape Town

**Amount:** One thousand two hundred rands  
for security deposit in respect of above flat.

R1 200.00

\_\_\_\_\_  
*Signature*

<b>Exception</b>	<p>If the deposit is kept by the landlord's estate agent, any accrued interest is paid by the registered estate agent to a special fund (Estate Agents Fidelity Fund). Such accrued interest is not paid to the estate agent or the landlord. The tenant in this instance will not receive any accrued interest at the end of the lease period.</p>
<b>When is Deposit Refunded?</b>	<p>At the end of the lease period. However, the following conditions would apply: -</p> <ul style="list-style-type: none"> <li>(i) <i>Within seven days</i> - when no amount is owed to the landlord. If there is no arrears, no damage to the dwelling or repairs required by the tenant, the deposit must be refunded with accrued interest within 7 days after the tenant has moved out.</li> <li>(ii) <i>Within fourteen days</i> - when amount is owed to the landlord. The landlord must refund within 14 days after the tenant has moved out of the dwelling an amount after deducting cost of repairs or any amount for which the tenant was responsible for.</li> <li>(iii) <i>Within twenty one days</i> - when tenant refuses joint inspection. The landlord has to inspect the dwelling after the tenant moved out and having refused to inspect it with the landlord within three days before the lease period ended. The landlord has a total of 21 days from the time the tenant has moved out to inspect the dwelling, carry out repairs, deduct the costs, arrear rental and cost of lost keys and to refund any money available.</li> </ul>



**What must the landlord do if deposit is used for repairs and replacing lost keys?**

The landlord must have in his or her possession all receipts as proof. The tenant has the right to inspect all vouchers regarding the landlord's expenses deducted from the deposit or set off.

**What can the landlord do if the costs of repairs or arrears exceed the deposit with accrued interest?**

The landlord can take legal action to claim the balance owed to him or her plus legal costs.

**What about the tenant who moves out without a notice to end the lease?**

The tenant is in breach and the landlord can take legal action against him or her for breaking the contract [s5(3)(o)]. The tenant is also responsible for the rental for the remaining lease period.

**Example 1**

If the lease was for 12 months, from January to December and the tenant moved out end of September, he or she will owe the landlord rentals for October, November and December.

**Example 2**

If the lease is a monthly one, the tenant is required to give the landlord a calendar month's notice of his or her intention to move out. If the tenant moves out without giving a calendar month's notice, say on the 3<sup>rd</sup> day of the month, the tenant is liable for the month's rental.

**Can deposit be used as rental?**

Only if the landlord allows the tenant to use the deposit as rental for a particular period (eg. the last week in the case of a weekly tenancy, last month in a month to month tenancy).

**What happens to the deposit if the landlord sells the dwelling?**

The new owner / landlord is responsible for the refund of the deposit, even if the new landlord did not receive the deposit from the previous owner. The tenant's claim is based on the receipt for deposit paid.

## RENTAL

### Payment of rental

1. The payment of rental on time is an important part of the rental agreement. It must be paid at the time and place agreed to, and in the manner requested (cash, cheque, money order, etc).
2. Failure to pay, continuous late payment of rent or the tenant withholding payment, is a violation of the rental agreement. Such actions give the landlord the right to cancel the lease.
3. If the dwelling is let without an agreement to rental, then no contract of lease exists.
4. The landlord can lodge a complaint with the Rental Housing Tribunal of unfair practice when rental is not paid. The tenant is under duty to pay rental regularly, on time and in full [s 4 (5)(a)].

### When is Rental Paid?

1. In a written lease, the rental is payable on the date stated in the lease.
2. In a verbal lease, it is payable on the date agreed by the landlord and tenant.

### Rent is either paid in Arrears or in Advance.

**Arrears:** If it is paid at the end of the period of occupation, it is paid in arrears, e.g. in the case of a weekly tenancy, rental is paid on or before the end of the week; in the case of a monthly tenancy, rental is paid on or before the end of the month.

**Advance:** If it is paid at the beginning of the period of occupation then it is paid in advance. Most tenancies are based on advance payment of rental.

Some tenants confuse the rental paid in advance when the lease contract comes to an end. It is believed that rental is not payable for the last month (or week) of the lease period because of the “advance rental”. This misunderstanding or confusion can lead to legal action against the tenant for arrear rental.

**What Rules apply when there is no agreement about the date rentals are payable?**

(a) If the rental is payable in advance, e.g. in the case of a monthly lease, the rental is paid on or before the 7<sup>th</sup> day of the month in terms of common law.

(b) If the rental is payable in arrears, then it must be paid on or before the date agreed or on or before the last day of the month or week or day or year. If such a first day of the month falls on a Sunday, to pay the rental after Sunday would be a breach of the lease.

(c) In the case of a rent controlled dwelling, it was payable by no later than the 7th day of the month.

**It must be understood that there is no period of grace unless such a period is agreed upon by the landlord and the tenant, either specifically or by implication.**

**Late Payment of Rental**

If a written lease does not have a clause dealing with the late payment of rental, or in the case of a verbal lease, the position on the late payment of rental is that the tenant is in breach of the terms of the lease, the landlord may choose to declare the lease cancelled or to enforce the payment of the rental, or do both.

**Landlord's Remedy**

The landlord's remedy would be to issue summons to recover the arrear rental or cancel the lease or start eviction proceedings. The landlord can recover outstanding rental through the Rental Housing Tribunal or through the courts. The landlord can also use the hypothec (refer to discussion on “Can a landlord seize a Tenant’s Property?”).

## **Summons**

If the landlord chooses to enforce payment of the rental then he or she simply causes summons to be issued in which the landlord claims payment of the arrears. The tenant may be required to pay the cost of the summons and any other legal costs incurred by the landlord.

## **Cancellation of the lease**

If the landlord chooses to cancel the lease, he or she must give the tenant notice of this intention, that is, that the tenant must move out of the dwelling. However, the tenant still has to pay the arrears even after vacating the dwelling.

The landlord can cancel the lease contract for arrears under the following circumstances: -

- Cancellation Clause – in a written lease contract there must be a clause that allows the landlord to cancel.
- In a verbal lease or in the absence of a cancellation clause in the written lease, the landlord has to give the defaulting tenant a notice (Notice of Recission) to pay the arrears within a reasonable period eg. 14 days. Should the tenant fail to pay after such a notice is given, the landlord can cancel the lease agreement.
- Notice of Recission (as mentioned above): the landlord is required to notify the tenant to pay the rental owing within a reasonable period. However, it would appear that the Rental Housing Act in terms of section 4(5)(c) allows the landlord to cancel a lease contract when no unfair practice exists. In addition to this, the landlord's reasons to cancel must also be specified in the lease, in other words, there must be a cancellation clause.

## **Eviction**

The landlord can ask for an order of eviction if the tenant refuses to vacate. The landlord can lodge a complaint of unfair practice with the Rental Housing Tribunal. The tenant is under duty to pay his or her rental as agreed and the landlord is entitled to recover arrears after a ruling is obtained from the Tribunal [s 4(5)(b)].

**Tenant's Remedy  
should the owners /  
agents refuse to accept  
rental**

1. Post a cheque or postal order by registered mail, or
2. Instruct an attorney to pay the rent; or
3. Approach a community based, legal or paralegal body to pay the rental on his or her behalf.

The tenant must ensure that the attorney or any organisation acting for him or her issues a receipt. However, should a third party (own attorney or organisation) to whom rental is paid ceases to exist or misuses the rental, the tenant is ultimately responsible for the payment of rental to the landlord.

**RENT INCREASE:**

**Written Leases and  
Rent Increase**

1. A landlord may give a written notice of a rental increase, which becomes effective when the rental agreement is renewed by mutual agreement.
2. The law requires a minimum advance notification for such a change.
3. The law does not limit the amount by which a landlord may increase the rent. However, according to the Rental Housing Act in terms of section 5(6)(c) the rental increase must be reasonable and such escalation must be included in the lease.

**a) Escalation Clause:**

Written leases must contain a rent clause which allows a rent increase before the renewal date, provided the tenant abides by all the conditions in the lease.

**b) Automatic Renewal Clause**

If the landlord proposes to make any change in the renewed lease regarding rental increase, he must notify the tenant, in writing, on or before the tenant's deadline for notice of termination of the rental agreement.



**What is the position when there is a change in ownership?**

If the dwelling is sold, the new owner is bound to honour any rental agreement existing at the time of the sale.

## RECEIPTS

When the tenant makes a payment, the landlord must receipt the amount [s5(3)(a)]. Even if the tenant pays into the landlord's bank account, the landlord must write out a receipt and hand it over to the tenant.

**A receipt must include the following information: -**

- a) the tenant's name
- b) the date money is received
- c) the address of the dwelling
- d) the type of dwelling (eg. flat, room, shack, garage)
- e) what the payment is for (eg. rental, arrears, deposit, repairs, service charges like water, electricity)
- f) the period for which payment is made
- g) the correct amount.

Should the landlord refuse or fail to issue a receipt the tenant can refuse to make payment.

Receipt is proof of payment like a cash sales slip that is proof of purchase.

**What can the tenant do if a receipt is not issued?**

Lodge a complaint with the Rental Housing Tribunal regarding an unfair practice.

## UNDISTURBED USE AND ENJOYMENT

A tenant rents a property for his or her quiet and undisturbed use and enjoyment. It is therefore the landlord's duty to fulfil this right during the lease period.

### How does the landlord disturb or interfere?

- (i) preventing a tenant access to his or her dwelling by barring entry,
- (ii) preventing him or her from occupying the dwelling or part of it,
- (iii) cutting off water or electricity supply or putting up barriers that interfere with the tenant's ease of entry or exit to his or her dwelling,
- (iv) refusing to attend to specific problems e.g. leaking roof, faulty electrical wiring, plumbing.
- (v) carrying out repairs which are not necessary or which can be done after the lease expires
- (vi) entering the dwelling without the tenant's consent

### What are the tenant's remedies?

- a. A tenant may demand that the landlord put the dwelling into the condition required by contract.
- b. Make a proportionate reduction of rent while remaining in occupation.
- c. Cancel the contract and sue for breach.
- d. Take the matter to court to prevent the landlord from continuing the interference.
- e. Restrain the landlord by an interdict if he or she enters without permission because this is trespassing.
- f. File a complaint with the Rental Housing Tribunal in terms of s4(2)<sup>4</sup> and s4(3)<sup>5</sup> or as an unfair practice.

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<sup>4</sup> Section 4(2) -

<sup>5</sup> Section 4(3)(a) -

	<p>The landlord cannot enter the tenant's dwelling unless arrangement is made with the tenant. A landlord who enters the tenant's dwelling without permission may be guilty of a criminal trespass. The landlord would be like a stranger should he or she enter the dwelling without permission or prior arrangement.</p>
<b>What to do?</b>	<ul style="list-style-type: none"> <li>• The tenant may report the incident to the police. The police have the power to remove the lock from the door if the landlord fails to do so immediately.</li> <li>• If the police are not helpful the tenant should seek legal assistance: an attorney can obtain an urgent court order putting the tenant back into the dwelling.</li> <li>• The tenant can file a complaint with the Rental Housing Tribunal for violating his or her rights.</li> </ul>
<b>The Landlord's Rights</b>	<p>A landlord must maintain the premises, therefore the law grants him or her reasonable rights to enter his or her property in order to inspect it. But such inspection must be carried out at a time that suits the tenant [s4(2)]. However the tenant must not be "difficult" or unreasonable in agreeing to a time that suits both parties.</p>
<b>The Tenant's Duty</b>	<p>It is therefore necessary for a tenant to conduct himself or herself in a manner that will not bring him or her into conflict with the law or the landlord. The landlord can also lodge a complaint of unfair practice with the Rental Housing Tribunal in terms of s15 that includes nuisance, overcrowding, damage to property.</p>
<b>Examples are: -</b>	<p>The tenant creates a disturbance by making a noise, playing music loudly. Bring in things, which would cause damage to the premises e.g. explosives, smelly goods and the like.</p> <p><b>★ REMEMBER: -</b></p> <p>If the tenant causes such a problem, the landlord too can obtain a court order to stop the problem, regard it as a breach of the lease and cancel it, can sue for damages.</p>

### Landlord's Duties

1. The landlord has to hand over the dwelling for occupation to the tenant in a reasonable condition ("a good state of repair") that would allow the tenant undisturbed use and enjoyment.
2. A landlord is further required to maintain the property both internally and externally at all times. Parties can however agree that the tenant will take over certain duties of the landlord.

### Internal Repairs

The landlord has to maintain the premises let and ensure that the following is in good and safe working order (eg. electricity, plumbing, ventilation, doors, windows).

If the landlord installs appliances such as stoves and refrigerators, he or she has to keep these in good working order too.

### External Repairs

External repairs include damage to roofs, windows, doors, plumbing, repair works and gutters. The landlord also has a legal duty to keep every part of the external dwelling clean and free of rodents, dirt, garbage or other offensive material.

A tenant, however, can undertake to maintain the premises and thereby relieve the landlord of his or her common-law duty. The tenant must look for a "maintenance clause" before signing a lease.

### Repair-and-Deduct

Should the landlord fail to carry out the necessary repairs or fail to maintain the premises in a proper condition, a **FORTEEN** (14) days notice (a letter detailing the complaints) can be sent to him or her. It is considered a reasonable time period for the landlord to effect the necessary repairs.

## Tenant's Remedy

The tenant may attend to these repairs himself or herself and

- (i) deduct the cost of such repairs from the rental, or
- (ii) set it off the rental, or
- (iii) claim a rental reduction.

Receipts and cash sale slips are important as proof of money spent.

- (iv) The tenant could cancel the lease contract because the landlord refused or failed to carry out the necessary repairs or maintenance. Such repairs or maintenance should not be merely an inconvenience but one that makes it impossible to enjoy the use and enjoyment of the dwelling.

The tenant can sue the landlord for breaking the lease contract (breach).

- (v) The tenant may decide not to carry out repairs himself or herself and not cancel the lease contract. The tenant can file a complaint with the Rental Housing Tribunal.

### ★ REMEMBER: -

While it is the landlord's duty to maintain the dwelling during the lease period, it is important for the tenant to inform the landlord of the repairs or maintenance, preferably in writing.

## Limitations of the use of Repair-and-Deduct

1. Tenant must give reasonable notice in writing to the landlord regarding repairs to be carried out. The landlord must be given the opportunity to attend to the repairs.
2. Tenant can only attend to defects that interfere with his or her proper use and enjoyment.
3. Tenant may not have the money for the cost of repairs.
4. Tenant agreed (in a written lease) to maintain and repair the inside (and outside) of the dwelling.

**What can the Tenant do in an Emergency?**

For example, if there is a burst waterpipe, the tenant can have it repaired if the landlord fails to respond or cannot be contacted. Should the landlord refuse to pay the repair cost, the tenant can deduct the cost from the rental or have it set off.

## LIFTS

The owner or landlord is required to examine and maintain a lift in his or her building at regular intervals.

**What information must be displayed in the lift?**

The manufacturer's name, the year the lift was installed, the rated speed and load in kilograms and the official number for the permission to install and use a lift.

**Where does one report a lift that is faulty or poses a danger?**

One can report it to the Inspection and Enforcement Services (IES) in the Department of Labour.

**Procedure to lodge the complaint**

A written complaint must be sent to the IES either by fax or by post.

**Is there a penalty for failing to maintain a lift?**

Yes. If the owner or landlord is found guilty of breaking the law, he or she could be fined or imprisoned.

**What if a tenant vandalises a lift?**

- The landlord can lay a criminal charge.
- Cancel the lease.
- File a complaint with the Rental Housing Tribunal.

## HEALTH AND FIRE HAZARD

**With whom does the landlord or tenant lodge a complaint regarding health and fire hazards?**

If the tenant allows overcrowding, the landlord can file a complaint with the Rental Housing Tribunal or lodge a complaint with the local health department.

If the tenant uses the fire fighting equipment for personal use (e.g. to wash a motor vehicle) the landlord can report the matter to the fire department.

Should the landlord fail or neglect to attend to health related matters such as rodents, bird lice or borer infestation, the tenant can file a complaint with the Rental Housing Tribunal or lodge a complaint with the local health department.

Fire and health matters are controlled by bylaws. Generally, the owner or landlord must allow fire fighting equipment (e.g. fire extinguisher, sprinkler system) to be examined at least once every calendar year by a person who holds a certificate of competence. Check the bylaws or contact the local authority for information.

## LOCKOUT

**What is a lockout?**

It simply means that a tenant is prevented from entering the dwelling because the landlord or his or her agent has locked the dwelling. Thus, a tenant has no access to his or her personal possessions and to the dwelling. The landlord, by acting in this way, interferes with the tenant's **"use and enjoyment"** of the dwelling.



**Are lockouts legal?**

**NO!**

A Landlord has to use an eviction process, which guarantees the tenant the opportunity of defending the action. The landlord cannot resort to "*self-help eviction*" [s 4(5)(d)(ii); s 15; s 13 (4) (c)] because this would be an unfair practice.

Refer to section on **Eviction**

**Is there anything a tenant can do once locked out?**

**YES!**

- The tenant can lodge a complaint with the Rental Housing Tribunal regarding an unfair practice, or
- Bring an urgent application before a magistrate court for immediate relief (spoliation order), i.e. the court order must include an instruction to the Sheriff to have the door unlocked and the tenant allowed back into the dwelling.

**Can a tenant re-enter?**

If the landlord is not in physical possession of the dwelling the tenant could simply re-enter the premises. However this may amount to FORCED ENTRY and opens the tenant to possible criminal and civil action taken by the landlord e.g. trespassing, theft or damage as a result of the forced entry. However, should the tenant re-enter, the landlord will have to explain that he or she took the law into his or her own hands by locking the tenant out in the first place, which was illegal.

The police generally are very reluctant to get involved in disputes of this nature (between landlord and tenant) because such disputes and conducts are not criminal but civil. However, the police can take action if there is a ruling from the Rental Housing Tribunal.

**Can a tenant claim for damages in a lockout situation?**

**YES!**

If the tenant cannot free legal aid, the cost of the court action, the attorney's fees and any other damages the tenant suffers can be recovered from the offending landlord in a civil damage action.

Examples of what the tenant can claim:

- cost of alternate accommodation
- damage to goods in the dwelling
- loss of goods in the dwelling
- change of lock

**Can a landlord lockout a tenant for arrear rental?**

**NO!** A landlord cannot lock a tenant out or seize a tenant's goods for unpaid rent [s (4)(3)(c); s (4)(5)(b)]. The landlord must respond to unpaid rent through proper legal procedure.

**Can a landlord seize the tenant's property?**

Yes, but only through a legal process.

The landlord entrusts his or her dwelling to the tenant for temporary use and enjoyment of the property in return for rental agreed upon.

The tenant's duty is to pay rental (common law) and the landlord's right is to receive prompt and regular payment of rental [s 4 (5) (a)].

**What is a tacit hypothec?**

The landlord's lien or hypothec means the law gives the landlord a powerful weapon against a tenant who is in arrears. The landlord has a real right to the tenant's goods that are in the landlord's dwelling, including the tenant's money<sup>6</sup>.

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<sup>6</sup> Including money (Kahn & Lotz)

**When can the landlord seize the tenant's goods?**

As explained above, when the tenant fails to pay the rental that is due.

**What procedure must the landlord follow?**

There are two ways given to the landlord by the Magistrates' Courts Act, 32 of 1944.

- i) Section 31 allows the landlord to issue a summons with an automatic rent interdict. This means that the tenant cannot remove his or her goods until the court gives the final order.
- ii) Section 32: the landlord or his agent applies for the tenant's goods to be attached by telling the court on affidavit where the dwelling is, the amount of unpaid rental, that the tenant was given seven days written notice to pay the arrear rental or that such demand was made and that the tenant is about to remove the goods from the dwelling to avoid payment of the rental.

It is important for the landlord to get an attorney or to consult the Clerk of the Court to seize the tenant's goods for rental owing. The tenant must also consult an attorney or the Clerk of the Court to find out what to do.

**What can the tenant do when his or her goods are seized without a Court Order?**

The tenant can ask the Clerk of the Court for advice or an attorney. He or she may lodge a complaint with the Rental Housing Tribunal. The landlord cannot seize goods unlawfully [s 4 (3)(6)].

In summary then, the tenant is under duty to pay rental regularly, on time and in full. The landlord is allowed to seize the tenant's goods for unpaid rental by following certain legal procedures.

## NOTICE TO VACATE (ENDING A LEASE)

A notice to vacate is a means whereby the landlord notifies the tenant that the lease is cancelled or terminated and he or she must vacate the dwelling by a certain day. Similarly, a tenant intending to vacate the dwelling is required to inform the landlord of his or her intention to do so. The notice to vacate must be in writing in terms of section 5 (5) of the Rental Housing Act.

### **Some factors which may cause the landlord to end a lease**

- 1) Termination of a periodic lease
- 2) Late payment of rent
- 3) Being a nuisance to neighbours
- 4) Damage to the dwelling
- 5) Any breach in terms of the agreement

### **Some factors which may cause the tenant to end a lease**

- 1) Failure to maintain the premises
- 2) Failure to allow the tenant free and undisturbed use and occupation of the premises.

### **Does a landlord have to give a reason for an eviction?**

Until recently, our law seemed to have allowed the landlord to issue a notice to vacate without giving a reason. A month-to-month tenant, for example, can be evicted on a calendar month's notice, without the landlord having to state or prove any cause or reason. This calendar month's notice ends the tenancy. In short, the landlord is saying "this is my property, I want it back, I don't have to explain why – so get out". Though this sounds unjust and ruthless, and may be so in certain instances, it is entirely legal.

However, in terms of the Rental Housing Act, the landlord can terminate a lease provided he or she:

- (i) has specified in the lease the grounds for terminating a lease and
- (ii) that there is no unfair practice when terminating the lease.

**How can a lease be terminated / cancelled (brought to an end)?**

**When notice is NOT required**

- ▶ **Mutual Agreement:** A lease agreement or tenancy can also be terminated by the landlord and tenant **mutually** agreeing to do so. In this case, even if there is a written lease agreement, a written notice is not necessary. The notice to end the lease can be conveyed verbally or can be implied from the conduct of the parties.
- ▶ **Fixed Period:** (by effluxion of time) When both the tenant and landlord **have agreed in writing** (in a lease agreement) that the tenancy is for a specific time, e.g. 1<sup>st</sup> January 2002 to 30<sup>th</sup> June 2002. The landlord does not have to remind the tenant that he or she will have to vacate the dwelling at the agreed date because the lease is for a fixed period. At the end of the period, the lease comes to an end.

**When notice IS required**

- ▶ **Cancellation:** the landlord or tenant can cancel the lease when there is a major (material) breach, e.g. non-payment of rental; failure to allow the tenant free and undisturbed use and occupation of the premises.
- ▶ **By the giving of Notice** -
  - 1) The period of notice depends on the agreement between landlord and tenant.
  - 2) If there is no agreement of such a notice then the notice is determined according to law in 2 ways:
    - 2.1. In a written lease there should be a clause in the lease that states the period of the notice.

2.2. If this clause is absent then the law has laid down the following: -

- i) for a day to day lease, the period is one day - because the rent is paid daily.
- ii) for a weekly lease the period is one week - because the rent is paid weekly.
- iii) for a monthly lease -the period is one month - because rent is paid monthly.
- iv) for a lease longer than one month - the period depends on the circumstances.

### **A CALENDAR MONTH'S NOTICE**

By a calendar month's notice is meant that a notice must be given not later than the first day of the month, informing the other party of the intention to vacate the dwelling at the end of that month. Similarly, a weekly periodic lease is ended by giving at least one week's notice; a day-to-day lease requires at least 24 hours notice.

The notice must be for a whole period, in other words, a notice given on the 22<sup>nd</sup> of March to end the lease on the 22<sup>nd</sup> or 23<sup>rd</sup> of April is not for a whole period, it is not a calendar month's notice. The notion of a 30-days notice is misleading and incorrect.

A periodic lease is therefore for a period; a day-to-day lease, yearly, monthly or weekly, that starts on the first day of the period and runs to the last day, even if rental is paid at the middle of the period.

## EVICTIION

### What about eviction regarding the Rental Housing Act and other laws?

#### Arbitrary eviction

The landlord cannot evict the tenant without permission from a court of law or the Tribunal or without giving reasons. In other words, arbitrary eviction is not allowed.

1. The Constitution of the Republic of South Africa [s 26(3)]<sup>7</sup> makes it illegal for a landlord to evict a tenant without a court order.
2. The Common law: The landlord cannot evict the tenant without approaching the court to have the tenant evicted from the dwelling.
3. The Rental Housing Act: Should a tenant believe that the eviction is unfair, he or she may lodge a complaint with the Rental Housing Tribunal. Section 4(5)(c)<sup>8</sup> of the Rental Housing Act allows a landlord to terminate a lease on grounds that do not constitute an unfair practice and are specified in the lease.

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<sup>7</sup> s 26 (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

<sup>8</sup> s 4 (5) The landlord's rights against the tenant include his or her right to -  
(c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;



This law (Rental Housing Act) changes the common law position even further. The landlord has the right to terminate or cancel the lease contract and in this way inform the tenant to move out of the dwelling by a certain date. However, the landlord can only do this under certain conditions. The Act requires the landlord to make sure that the lease contract is cancelled on the grounds that: -

- (i) there is no unfair practice
- (ii) the reason for such a cancellation is specified in the lease contract, e.g. a cancellation clause must be in a lease contract allowing the landlord to cancel or “break” the agreement.

In summary, the landlord has to get permission from a court or a Rental Housing Tribunal to evict a tenant. The courts and the Tribunals, from time to time, have to follow any other superior decision that affects the eviction process.

**Is there any other way to challenge an eviction?**

A tenant could get support from other tenants, tenants’ committee and organisations to help challenge an unfair eviction or an eviction without a reason.

Legally, a tenant can defend an eviction proceeding if he or she has grounds or reasons to do so. Tenants can challenge eviction proceedings by asking the courts to have landlords provide reasons. Below, a copy of a letter one could send to a landlord or his or her attorney. This letter can then be used in court to challenge the eviction. Off course, it is strongly advised that the services of an attorney be used. It would be unfair to challenge a landlord simply as a delaying tactic, e.g. tenant cannot pay rental.

## **SPECIMEN LETTER**

*To Landlord's Attorney*

*Dear Sirs*

### **NOTICE TO VACATE**

*I am extremely concerned at your clients' failure or oversight to state the reason or cause for demanding that I vacate the premises. In the circumstances I demand, as I hereby do, that you kindly take instructions on the reason or cause that has brought about this unfortunate action on the part of your client, and to deliver the response to me within five days of date hereof.*

*In the event that no response is received from your office within 5 days, and assuming that your client starts legal proceedings after receipt of my letter, the court will be asked to draw the following inferences:*

*That no reason or cause existed at the relevant time to terminate the lease agreements or seek the eviction; alternatively, that a bad, improper, or irregular reason or cause motivated the termination of the lease agreement and eviction.*

*In the event that a reason or cause does eventually surface during the legal proceedings in the above matter, the court will be asked to infer that the reason or cause was "manufactured" after the fact, and as such, is evidence of arbitrary and / or bad faith and / or irrational conduct or behaviour on the part of your client.*

*Yours faithfully*

*Tenant*

## THE EVICTION PROCEDURE

### Notice to vacate

The landlord must communicate clearly his or her intention to end the tenancy. It would appear from section 5(5) of the Rental Housing Act that the notice to terminate must be in writing.

For the notice to vacate to be valid, it must:

- Specify the names of the parties
- The address of the premises
- In the case of a breach, the nature of breach of agreement or amount of rent overdue<sup>9</sup>
- The date of the notice
- Be signed by the landlord or his or her agent
- Preferably be delivered by hand or registered mail or by a Sheriff. If the matter comes to court or before the Tribunal, the landlord will have to prove that the notice was properly served when the tenant denies having received it.

Non-compliance with the above may result in a delay due to parties disputing the facts of the matter. A written notice to vacate that is communicated clearly prevents confusion or disputes that often results in a long delay and costly court procedures.

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**The Notice to Vacate does not require acceptance by the tenant. In other words, even if the tenant says that he or she is not accepting the notice to move out of the dwelling, the notice is valid.**

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<sup>9</sup> Refer to s 4(5)(c) of the Rental Housing Act that requires the landlord to specify in the lease the grounds for terminating a lease.

**Notice of Recission –  
what does it mean?**

In terms of s 5(5) of the Rental Housing Act, it would appear that a written notice to terminate a lease must be given by either the landlord or the tenant. The tenant is also required to follow the procedure of giving the landlord notice to vacate:

- Specify the names of the parties
- the address of the premises
- In the case of a breach, the nature of breach of agreement
- The date of the notice
- Be signed by the tenant
- Preferably be delivered by hand or registered mail or by a Sheriff. If the matter comes to court or before the Tribunal, the tenant will have to prove that the notice was properly served when the landlord denies having received it.

Before the Rental Housing Act, a landlord under common law had to send a notice of recission in the case of the tenant being in breach if there was no cancellation clause. The tenant, in other words, was given a reasonable time to sort out the breach e.g. paying the arrear rental. If the tenant failed to remedy the breach after receiving the notice of recission, the landlord could cancel the contract.

In terms of the Rental Housing Act, it would appear that a notice of recission cannot be used because the landlord has to specify the reason to cancel and the lease must have a cancellation clause and no unfair practice must exist [s4(5)(c)].

**Can a landlord or his or her agent evict a tenant without legal process?**

**NO!** The landlord cannot take the law into his or her own hands. It is illegal for a landlord to evict a tenant, except with an order from court or a ruling from a Rental Housing Tribunal. Even if a proper notice has been given but the tenant remains in occupation, the landlord cannot "throw" him or her out. The landlord must issue a summons and obtain a judgment for eviction or bring an application before the High Court (Supreme Court) or before the Rental Housing Tribunal. Only the sheriff may evict a person under a properly issued Warrant of Ejectment.

**What can the tenant do if evicted illegally?**

An aggrieved tenant can take legal action and can claim legal costs from the landlord. Legal action can include asking the court or Tribunal to allow the tenant to move into the dwelling. Our law does not allow a landlord or his or her agent to remove a tenant by means of physical force or by preventing access to the dwelling. In terms of the Rental Housing Act this would be an unfair practice and the tenant can obtain a ruling directing the landlord to reinstate him or her.

**What can a landlord do if the tenant refuses to move out?**

The landlord is also protected by law when the tenant ignores a notice to vacate or refuses to move out. Take for example a lease contract the tenant entered into for 12 months: the tenant agreed to occupy the dwelling from 1 January to 31 December with no option to renew or extend the lease period. The tenant therefore agreed to move out on or before the last day of December and the landlord does not have to remind the tenant that he or she must vacate the dwelling. Should the tenant fail to move out, the landlord may approach the courts to have the tenant evicted or lodge a complaint with the Tribunal.

## EJECTMENT ORDER

This is granted by the court authorising the physical removal of the tenant or occupant and his or her belongings. An ejectment order can be stayed, i.e. delayed, provided an application is made to Court. A tenant must have good reasons for the court to stay or temporarily stop the ejectment. Such an application can be expensive. A landlord can also approach the Tribunal to obtain an ejectment order, provided there is no unfair practice against the tenant.

## SUMMONS (through Magistrate's Court)

### What is a Summons?

A document which can be served by the landlord, either by himself or herself or through an agent, lawyer or sheriff. A summons is issued after an eviction notice or for failure to pay rental due. It is first presented to the Clerk of the Court who stamps it and files a copy in the (landlord's) file in court. There are two types of summons the landlord could serve on the tenant: -

1. Ordinary
2. Rent Interdict.

### What should the tenant do on receiving a summons?

- Enter "an appearance to defend". If the tenant does not know how to do this, immediately consult an attorney, nearest community organisation or approach to the Legal Aid Board.
- If the tenant does not respond to a summons immediately, default judgment can be taken against him or her followed by an ejectment order.
- A tenant must ensure that he or she has a proper defence, i.e. a reason why the court should not give judgment in favour of the landlord. If the tenant does not have a good defence he or she may lose the case and will have to pay the landlord's legal costs as well.

**Examples of good defences are: -**

- a. Where the tenant has in fact paid the rent but the landlord is suing for arrears;
- b. Where the tenant has a claim against the landlord for some other reason and the money the landlord owes him or her, cancels out the money owed to the landlord;
- c. Where the landlord has failed to effect a repair to the dwelling which he or she is obliged to undertake, and the tenant carries out the relevant repair and recovers the cost from the landlord by withholding the rent, provided the tenant followed the procedure of “Repair and Deduct”.

## **SUMMARY JUDGEMENT**

After the tenant enters an appearance to defend, the landlord may inform the court that the tenant has no grounds to defend the summons and is merely playing "for time". The court is asked to grant judgment immediately. However, the tenant may oppose the “Summary Judgment” within a specified period [e.g. 14 days] by filing an opposing affidavit with the landlord's attorney and the court.

There are various other legal procedures that follow after summons is served, after the tenant enters an appearance to defend. It is therefore necessary to seek legal advice immediately.

## **CHANGE OF OWNERSHIP**

**What are the rights and obligations when the dwelling occupied by the tenant is bought by another person?**

The new landlord steps into the shoes of the previous landlord (seller). The tenant and the new landlord are bound by the terms that were agreed upon between the tenant and the previous (old) landlord. If the lease was a month to month lease and the tenant paid his or her rental on a monthly basis, the new owner have to give a calendar month's notice terminating the lease.



**How does the Rental Housing Act (RHA) affect the change of ownership?**

If the dwelling was sold in an auction and the new landlord (e.g. a bank) notifies the tenant to vacate the dwelling, the tenant is entitled to certain information. It is possible that the previous landlord did not disclose relevant information to the new owner, such as an existing lease agreement. It is important for the tenant to provide a copy of the lease agreement to the new landlord.

The following documents (issued by Court) will give the tenant an idea of the conditions under which the new landlord bought the dwelling: -

- ☐ Conditions of Sale
- ☐ Sales Notice

★ **Exception to the Rule**

If the landlord becomes insolvent, it does not end the lease. However, if the landlord had mortgaged the property then the property is subject to a prior real right and is sold with the lease to recover the money owed to the bank. If the buyer's or the highest bidder's offer is lower than the mortgage debt, the law allows for the property to be sold without the lease.

It is advisable to consult someone who has knowledge of purchase and sale agreements, preferably an attorney. Generally, any competent attorney will be able to advise the tenant of his or her rights regarding change of ownership, especially when matters are not clear cut.

The new owner must also fulfil duties laid down in the RHA.

## TENANTS' COMMITTEE

Committees are powerful structures through which tenants can voice their grievances and find solutions to problems. It gives tenants confidence and hope by providing a support group. The more organised a committee is the more successful it becomes in realising the rights of tenants. Committees can be formed in many ways and for a number of reasons. We suggest the following approach as a guideline:-

### FLAT COMMITTEES

A meeting could be convened to discuss issues affecting the building. A written or verbal notice should be communicated to tenants informing them of the purpose of the meeting, date, time and venue. After discussing the issues and before closing the meeting, a flat committee could be proposed. Ask for volunteers or nominations of floor representatives (floor reps) – at least one rep per floor. The floor reps could then elect one person to act as a co-ordinator of the flat committee.

### STREET COMMITTEES

Tenants may want to organise an entire area into a residents' or tenants' committee or association. The co-ordinators of the different buildings could nominate at least one rep per street to serve on an area or residents' / tenants' association.

Sometimes, a public meeting is convened to address certain issues. The meeting may resolve to form or constitute a residents' or tenants' body. The newly formed body may then organise structures on the ground (flat / street committees). It is important for the newly formed committee (interim committee) to draft a constitution which will contain the aims and objectives of the committee, what is required of the members, code of conduct, etc.

Grassroots structures played a pivotal role during the apartheid days. People expressed themselves through these structures in their struggle for a democratic society. The Rental Housing Act protects the rights of tenants to have tenants' structures [s15(I)(f)(x)].

**★ REMEMBER:**

Sometimes, certain people “highjack” committees or organisations for their own selfish interest. Tenants can be given wrong advice that may result in eviction, law suits and financial losses.

It is therefore wise even through committees or any structure to exhaust every possible means to resolve differences with the landlord through discussions. The Rental Housing Tribunal provides for landlord and tenant to resolve problems through mediation.

## SECTIONAL TITLE – LANDLORD, TENANT AND BODY CORPORATE

**Can a body corporate do the following: -**

- **Interview a prospective tenant?** *No!*  
There are many bodies corporate who interview prospective tenants to “screen” them. In other words, to decide whether a person should be allowed to occupy a dwelling as a tenant.
- **Restrict the number of occupants?** *No!*

• **Prevent visitors or place a time restriction regarding visitations?**

*No!*

• **Disconnect Electricity or Water Supply or lock a tenant out?**

*No!*

• **Collect rental from a tenant because of levies owed by the landlord?**

*No!*

The tenant's relationship is with the owner / landlord of the unit (dwelling) in terms of a lease agreement (verbal or written) and not with the body corporate of the Sectional Title or Share Block scheme.

**Is a tenant living in a Sectional Title scheme obliged to follow the House Rules?**

Yes, but as long as the House Rules do not go against any law, especially the Constitution of the Republic of South Africa and the provisions of the Sectional Titles Act.

## CHAPTER 3:

### SPECIMAN LEASE AGREEMENT

Attached to this Agreement are: “A” *List of Defects (signed by both parties)* and “B” *House Rules (signed by both parties)*

#### 1. PARTIES

The parties to this agreement are

\_\_\_\_\_ hereinafter called "Landlord",  
and

\_\_\_\_\_, hereinafter called "Tenant".

If Landlord is the agent of the owner of said property, the owner's name and address is

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### 2. PROPERTY

Landlord hereby lets the following property to Tenant for the term of this Agreement:

(a) the property located at: -

\_\_\_\_\_

(b) this property is a house / outbuilding / room / shack / hostel room or other (specify)

\_\_\_\_\_

and (c) the following furniture and appliances are on said property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### 3. TERM

The term of this Agreement shall be for \_\_\_\_\_, beginning on

\_\_\_\_\_ and ending on \_\_\_\_\_

#### 4. RENT

4.1. The monthly / weekly / daily or other (specify) rental for said property shall be R\_\_\_\_\_ due and payable on the \_\_\_\_\_ day of each month / week / day or other (specify) to the Landlord at \_\_\_\_\_ for which the tenant shall be given a written rent receipt.

4.2. The landlord has the right to receive prompt and regular payment of rental and the tenant knows and accepts his or her duty to pay the rental regularly, in full and on time.

#### 5. MUNICIPAL SERVICES

Municipal services shall be paid by the party indicated as follows:

	Landlord	Tenant	To be shared between tenants
Electricity	_____	_____	
Water	_____	_____	
Refuse removal	_____	_____	
Other	_____	_____	_____

The landlord undertakes to provide the tenant the original municipal billing / statement of account.

#### 6. USE OF PROPERTY

Tenant shall use the property only for residential purposes, except for incidental use in trade or business (such as telephone solicitation of sales orders or arts and crafts created for profit), so long as such incidental use does not violate local municipal laws or affects Landlord's ability to obtain fire or liability insurance.

#### 7. TENANT'S DUTY TO MAINTAIN PREMISES

Tenant shall keep the dwelling in a clean, tidy, safe and sanitary condition and shall otherwise comply with all local municipal laws requiring tenants to maintain rented dwelling. If damage to the dwelling (other than normal wear and tear) is caused by acts or neglect of Tenant, Tenant's

visitors or others occupying the dwelling under his / her control, Tenant must repair such damage at his or her own expense. Upon Tenant's failure to make such repairs and after reasonable written notice by Landlord, Landlord may carry out such repairs to be made and Tenant shall be liable to Landlord for any reasonable expense thereby incurred by Landlord. The landlord upon request will provide tenant with all receipts and vouchers regarding the repairs.

## **8. ALTERATIONS**

No substantial alteration, addition, or improvement shall be made by Tenant in or to the dwelling without Landlord's permission in writing. Such permission shall not be unreasonably withheld, but Tenant may have to agree in writing to restore the dwelling to its prior condition upon moving out.

## **9. NOISE**

Tenant agrees not to allow on the dwelling any excessive noise or other activity that disturbs the peace and quiet of other tenants in the building or neighbourhood. Landlord agrees to prevent other tenants and other persons in the building or common areas from similarly disturbing Tenants peace, quiet and use and enjoyment of the dwelling.

## **10. INSPECTION BY LANDLORD AND TENANT**

10.1. Joint inspection by both parties before the tenant takes occupation and within three days before the tenant moves out.

10.2. Landlord or his agent may enter the dwelling upon SEVEN (7) days written notice and with Tenant's consent, for the following purposes: to make repairs, when the landlord has reason to believe that the dwelling is damaged or vandalised and to exhibit the dwelling to prospective purchasers, mortgages, and tenants. Such entries shall not be so frequent as to seriously disturb Tenant's peaceful use and enjoyment of the premises. Such entries shall take place only with the consent of Tenant, which shall not be unreasonably withheld.

## **11. SECURITY DEPOSIT**

- a) Tenant shall pay Landlord, upon execution of this Agreement, a security deposit of R\_\_\_\_\_. The said deposit will be kept in a separate interest bearing account and the tenant shall be duly notified of the bank and the account number.
- b) Within seven (7) days after Tenant vacates the premises, Landlord shall return to Tenant the security deposit together with accrued interest.
- c) However, on the expiration of the lease, the deposit with accrued interest may be applied by Landlord toward reimbursement for any reasonable cost of repair or cleaning necessitated by tenants' acts or omissions in violations of this Agreement (normal wear and tear excluded)

and for rental which is due, unpaid, and owing. Provided Landlord notifies Tenant of his / her intention to apply the deposit toward reimbursement for any reasonable cost of repair or cleaning if Tenant fails to do so within a reasonable period. If any deduction is made, Landlord shall also give tenant a written itemised statement of such deductions and explanations thereof and refund any balance within fourteen (14) days after Tenant vacated the dwelling.

If the Landlord fails to comply with sections (b) or (c) of this paragraph, then the Landlord waives the right to make deductions from the security deposit and will be responsible for returning the entire deposit to Tenant when Tenant vacates the premises together with accrued interest.

## **12. LANDLORD'S OBLIGATION TO REPAIR AND MAINTAIN PREMISES**

- a) Landlord shall provide and maintain the building and grounds belonging to the dwelling in a decent, safe, and sanitary condition, and shall comply with all local laws, regulations, and ordinances concerning the condition of dwelling which at a minimum must be maintained in decent, safe, and sanitary condition and reasonably fit for human habitation.
- b) Landlord shall take reasonable measures to provide and maintain security on the dwelling and the building and grounds belonging thereto to protect tenant and other occupants and guest on the dwelling from burglary, robbery, and other crimes. Tenant agrees to use reasonable care in utilising such security measures.
- c) As repairs are now needed to comply with this paragraph, Landlord specifically agrees to complete the following repairs on or before the following dates:

<b>Repair</b>	<b>Date</b>
_____	_____
_____	_____
_____	_____
_____	_____

This list is not intended to be exhaustive, nor is it to be constructed as a wavier as to any other defective conditions, which may exist.

- d) If landlord fails to substantially comply with any duty imposed by this paragraph, Tenant's duty to pay rent shall be reduced until such failure is remedied. Upon Landlord's failure to make necessary repairs, Tenant may make or cause to be made said repairs and deduct the reasonable cost of said repairs from the rental. This section (d) shall apply to defects within Tenant's dwelling unit only, and then only if Tenant has notified Landlord or his agents of such defects and has given Landlord a reasonable time to make repairs. The remedies provided by this section (d) shall not be exclusive of any other remedies provided by the Rental Housing Act or any other law to Tenant for Landlord's violation of this Agreement.



### **13. SUBLEASING**

Tenant shall not assign this Agreement or sublet the dwelling without consent of Landlord. Such consent shall not be withheld without good reason relating to the prospective tenant's ability to comply with the provision of this agreement. This paragraph shall not prevent Tenant from accommodating guests for reasonable periods, provided no overcrowding is allowed.

### **14. RETALIATION**

If Tenant reasonably and peacefully exercises any right granted under this Lease Agreement or any relevant law, or if Tenant joins or organises a tenants' union, Landlord agrees not to retaliate against or harass Tenant in any way, specifically including but not limited to eviction, rent increase or services decrease, refusal to renew a term tenancy, or substantial alteration of lease terms.

### **15. DESTRUCTION OF PREMISES**

If the dwelling become partially or totally destroyed during the term of this Agreement, either party may thereupon cancel this Agreement upon reasonable notice.

### **16 (a) TENANT'S TERMINATION FOR GOOD CAUSE**

Upon a calendar months written notice, for good cause, Tenant may cancel this Agreement and vacate the dwelling. Said notice shall state good cause for termination. Good cause shall include, but not be limited to, entry into active duty with the military services, employment in another community, and loss of the main source of income used to pay the rental.

### **16 (b) LANDLORD'S TERMINATION FOR GOOD CAUSE**

The following are just causes to terminate a lease (by no means an exhaustive list): -

- i) Failure to pay rent when due;
- ii) The tenant habitually fails to pay the rent;
- iii) Failure to pay a rent increase, provided such an increase is not unconscionable and complies with any other relevant legislation;
- iv) Disorderly conduct – disturbing the peace and quiet of other tenants or the neighbourhood;
- v) Damage to the premises resulting from wilful conduct or gross negligence;
- vi) The accommodation is reasonably required for repairs and renovations, reconstruction or rebuilding scheme or demolition.

### **17. TERMINATION**

Upon termination of this Agreement, Tenant shall vacate the dwelling, remove all personal property belonging to him or her, and leave the dwelling in the condition he or she found them (normal wear and tear excepted). Landlord and tenant must jointly carry out an inspection of the dwelling within three days before the lease expires.

## **18. LAWSUITS**

If either party commences a lawsuit against the other to enforce any provision of this Agreement, the successful party may be awarded reasonable attorney fees and court costs from the other. Landlord specifically waives any right to recover treble or other punitive damages.

## **19.**

### **(a) ARBITRATION**

Parties to the agreement undertake to use all amicable ways to resolve any resultant problem or conflict arising from this contract, including arbitration. Both parties agree that should they submit themselves to arbitration, the decision of the arbitrator will be final and binding.

### **(b) RENTAL HOUSING TRIBUNAL**

The Rental Housing Tribunal has exclusive jurisdiction on unfair practice as well as jurisdiction to regulate landlord – tenant relationship, to receive complaints and to either mediate or hold a hearing. Parties agree to approach the Rental Housing Tribunal.

### **(c) COURTS**

Parties also have the option of using the courts, in the absence of an unfair practice.

## **20. HOLDOVERS**

If Tenant holds over upon termination of this Agreement and Landlord accepts Tenant's tender of the monthly rent provided by this Agreement, this Agreement shall continue to be binding on the parties as a month-to-month agreement unless landlord accepts the rental as damages.

## **21. NOTICES**

(a) All notices provided by this Agreement shall be in writing and shall be given to the other party as follows:

To the Tenant: at the dwelling.

To the Landlord: at \_\_\_\_\_

### **(b) Domicilium**

All notices hereunder by the LANDLORD to the TENANT shall be considered to be duly served when sent by prepaid registered letter post to the TENANT or delivered at the LEASED PREMISES, which the TENANT nominates and chooses as his or her place for the service of all legal processes.

WHEREFORE we, the undersigned, do hereby execute and agree to the Lease Agreement that this agreement was entered into without any coercion, deception or injustice.

**LANDLORD'S:**

**TENANT'S:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Date of Signature

**Witnesses**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Date of Signature

## PART 4

### Contact Details

#### RENTAL HOUSING TRIBUNALS

##### North West Province

Tel. 018 387 6000 / 2  
Fax 018 387 6039  
E-mail

##### Western Cape

Tel. 021 483 3107  
Fax 021 483 5023  
E-mail

##### Gauteng

Tel. 011 355 4290  
Fax 011 355 4258  
E-mail

##### KwaZulu-Natal

Tel. 031 336 5300  
Fax 031 336 5219  
E-mail

#### COMMUNITY LAW CENTRE

##### University of North West

Block K, Base Building  
Albert Luthuli / University Drive  
Tel. 018 389 2030  
Fax  
E-mail bodenstein@UNW001.uniwest.ac.za

##### Durban

7<sup>th</sup> Floor, Berea Centre  
249 Berea Road  
Tel. 031 202 7190  
Fax 031 210 140  
E-mail

#### HOUSING CONSUMER PROTECTION TRUST

6<sup>th</sup> Floor, North State Building  
Cnr. Market & Kruis Streets  
Johannesburg  
Tel. 011 333 8501  
Toll Free 0800 111 663  
Fax 011 333 1050  
E-mail hcptjhb@icon.co.za

#### BLACK LAWYERS ASSOCIATION

Legal Education Centre (BLA – LEC)  
3<sup>rd</sup> Floor, Royal St Mary's Building  
85 Eloff Street, cnr. Pritchard Street  
Johannesburg  
Tel. 011 337 1535 / 8  
Fax 011 337 1539  
E-mail

## PROVINCIAL HOUSING DEPARTMENTS

### **Mpumalanga**

Tel. 013 766 8439  
Fax 013 766 6213  
E-mail

### **North West**

Tel. 018 387 6000  
Fax  
E-mail tade@nwpg.org.za

### **Eastern Cape**

Tel. 040 609 5504  
Fax 040 635 2611  
E-mail mayes@dhlgl.ecape.gov.za

### **Northern Cape**

Tel. 053 830 9426 / 546  
Fax 053 831 8016  
E-mail

### **KwaZulu Natal**

Tel. 031 336 5306  
Fax 031 368 1725  
E-mail

### **Western Cape**

Tel. 021 483 3107  
Fax 021 483 5023  
E-mail

### **Free State**

Tel. 051 405 5717 / 8  
Fax 051 405 5008  
E-mail

### **Gauteng**

Tel. 011 355 4290  
Fax 011 355 4258  
E-mail

### **Limpopo**

Tel. 015 295 5400  
Fax 015 295 4190  
E-mail

## INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICAN (IEASA)

### **National Office**

Suite 2, Howard Centre  
Forest Drive, Pinelands  
Tel. 021 531 3180  
Fax 021 531 2931  
E-mail kate@cape.ieasa.org.za

## LAWYERS FOR HUMAN RIGHTS

### **Pretoria: National Directorate**

Kutlwanong Democracy Centre  
357 Visagie Street  
Tel. 012 – 320 2943  
Fax 012 – 320 2949  
E-mail [lhr@lhr.org.za](mailto:hr@lhr.org.za)

### **East London: Law Clinic**

Standard Bank Building, Oxford Street  
Tel. 043 – 743 9168  
Fax 043 – 743 9166  
E-mail [lhrel@lhr.org.za](mailto:lhrel@lhr.org.za)

### **Mafikeng: Law Clinic**

26 Molopo Road  
Tel. 018 – 381 0702  
Fax 018 – 381 2813  
E-mail [lhrmaf@lhr.org.za](mailto:lhrmaf@lhr.org.za)

### **Colesberg: Karoo Mobile Law Clinic**

44 Church Street  
Tel. 051 – 753 0803  
Fax 051 – 753 0627  
E-mail [lhrkaroo@lhr.org.za](mailto:lhrkaroo@lhr.org.za)

### **Polokwane (Pietersburg): Law Clinic**

2<sup>nd</sup> Floor, Ezella Building  
19 Thabo Mbeki Street  
Tel. 015 291 5309  
Fax 015 291 5154  
E-mail [lhrptg@wn.apc.org](mailto:lhrptg@wn.apc.org)

### **Caledon: Overberg Justice Centre**

Cathcard Cottage, 16 Cathcard Road  
Tel. 028 212 2060  
Fax 028 212 2102  
E-mail [mwojccaledon@mweb.co.za](mailto:mwojccaledon@mweb.co.za)

### **Durban: Refugee Rights Project**

Room 31, Diakonia Centre  
20 St. Andrew Street  
Tel. 031 301 0531  
Fax 031 301 0538  
E-mail

### **Malmesbury: West Coast Law Clinic**

Akacia Avenue, Westbank  
Tel. 022 486 4221  
Fax 022 486 4164  
E-mail [rights@xsinet.co.za](mailto:rights@xsinet.co.za)

### **Umtata: Law Clinic**

83 Madeira Street  
Tel. 047 531 0229  
Fax 047 531 1837  
E-mail [lhrumt@lhr.org.za](mailto:lhrumt@lhr.org.za)

### **Stellenbosch**

Corobrick Offices, Bridge Street  
Tel. 021 – 887 1003  
Fax 021 – 883 3302  
E-mail

## **DEMOCRACY FOR ALL (DFA) / STREET LAW OFFICES**

### **National DFA / Street Law Office**

c/o Centre for Socio-Legal Studies  
University of Natal  
Tel. 031 260 1291  
Fax 031 260 1540  
E-mail [degrandprei@nu.ac.za](mailto:degrandprei@nu.ac.za)

### **Potchefstroom University: Street Law Office**

c/o Community Law Centre  
Tel. 018 2930045  
Fax 018 297 7425  
E-mail [ccld@pukrhpot.co.za](mailto:ccld@pukrhpot.co.za)

### **Eastern Cape DFA / Street Law Office**

c/o Law Faculty  
University of Port Elizabeth  
Tel. 041 504 2198 / 504 2077  
Fax 041 504 2198  
E-mail [lwaller@upe.ac.za](mailto:lwaller@upe.ac.za)

### **Free State DFA / Street Law Office**

c/o Law Faculty  
University of Free State  
Tel. 051 4013593  
Fax 051 401 3593  
E-mail [loape@rd.uovs.ac.za](mailto:loape@rd.uovs.ac.za)

### **Gauteng DFA / Street Law Office**

c/o School of Law  
University of the Witwatersrand  
Tel. 011 717 8418  
Fax 011 339 8362  
E-mail [desia@mweb.co.za](mailto:desia@mweb.co.za) /  
[colgandd@law.wits.ac.za](mailto:colgandd@law.wits.ac.za)

### **Southern Cape Street Law Office (Satellite Office)**

c/o Teacher's Centre  
Tel. 044 279 2454 (h)  
Fax 044 279 1682  
E-mail

### **University of North West: Street Law Office**

Tel. 018 389 2030 / 389 2127  
Fax 018 389 2033 / 018 389 2281  
E-mail [jwblaw@unibo.uniwest.ac.za](mailto:jwblaw@unibo.uniwest.ac.za)  
[jobst@intekom.co.za](mailto:jobst@intekom.co.za)

## PROVINCIAL CONSUMER AFFAIRS OFFICES

### **Kwa Zulu Natal**

1<sup>st</sup> Floor, The Marine  
22 Gardiner Street, Durban  
Tel. 031 310 5300  
Fax 031 310 5416  
E-mail

### **Western Cape**

Room 434, 4<sup>th</sup> Floor  
9 Dorp Street, Cape Town  
Tel. 021 483 3091 / 3945  
Toll Free 0800 007 081  
Fax 021 483 3483  
E-mail

### **Gauteng**

94 Main Street, cnr. Main & Harrison Street  
Johannesburg  
Tel. 011 355 8006 / 355 8008  
Fax 011 355 8019  
E-mail

### **Eastern Cape**

Room 234, 2<sup>nd</sup> Floor  
Pick 'n Pay Building, Indwell House, Bisho  
Tel. 040 609 3050  
Fax 040 609 3231 / 635 2194  
E-mail

### **Northern Province**

58 Schoeman Street, Polokwane (Pietersburg)  
Tel. 015 298 7000  
Fax 015 295 8750  
E-mail

### **Northern Cape**

18 – 22 Stockdale Street, Kimberley  
Tel. 053 832 2566 / 7  
Fax 053 832 2564  
E-mail

### **Mpumalanga**

Suite 228, 2<sup>nd</sup> Floor  
66 Anderson Street, Nelspruit  
Tel. 013 752 3761 / 46  
Fax 013 752 3729  
E-mail

### **North West Province**

Ground Floor, East Wing  
Agri Centre, Dr James Moroko Drive  
Mmabatho  
Tel. 018 389 5046 / 5153 / 5155  
Fax 018 389 5036 / 5653  
E-mail

### **Free State**

1<sup>st</sup> Floor, Tourism Centre Building  
60 Park Road, Willows  
Tel. 051 403 3575 / 6  
Fax 051 403 3437  
E-mail



## **SMALL CLAIMS COURTS**

### **Northern Cape**

De Aar

Tel. 053 632 184

Fax

E-mail

### **Free State**

Bloemfontein

Tel. 015 401 2269 / 726

Fax

E-mail

### **Eastern Cape**

East London

Tel. 043 126 64 / 3 / 126 680  
129 717

Fax

E-mail

### **Gauteng**

Johannesburg

Tel. 011 491 5000

Fax

E-mail

### **Eastern Cape**

Port Elizabeth

Tel. 041 502 5111 / 502 5275

Fax

E-mail

### **Northern Province**

Polokwane (Pietersburg)

Tel. 015 212 841

Fax

E-mail

### **Western Cape**

Cape Town

Tel. 021 465 910 / 461 6282

Fax

E-mail

### **North West**

Klerksdorp

Tel. 018 462 6411

Fax

E-mail

### **Kwazulu Natal**

Durban

Tel. 031 302 4111

Fax

E-mail

## LEGAL AID BOARD JUSTICE CENTRES

### Northern Cape

15 Chapel Street, Chapwood Chambers  
Kimberley

Tel. 053 832 2348 / 50

053 832 4362 / 60

Fax 053 832 2356

E-mail

### Free State

Ground Floor, Sondagskookgebou  
154B Maitland Street, Bloemfontein

Tel. 051 447 9915

Fax 051 447 2106

E-mail

### Eastern Cape

1 Commissioner Street, East London

Tel. 043 704 4700

Fax 043 704 4716

E-mail

### Gauteng

1<sup>st</sup> Floor, Cape House

cnr. Fox & Maclaren Street

Marshalltown, Johannesburg

Tel. 011 838 6655 / 8

Fax 011 838 7018

E-mail

### Eastern Cape

1<sup>st</sup> Floor, President Centre

564 Govan Mbeki Avenue

North End, Port Elizabeth

Tel. 041 484 2724 / 3388

Fax 041 487 3335

E-mail

### Northern Province

1<sup>st</sup> Floor, Al Smit Building

26 Thabo Mbeki Street

Polokwane (Pietersburg)

Tel. 015 291 2429

Fax 015 295 4386

E-mail

### Western Cape

5 Church Street, Cape Town

Tel. 021 426 4126

Fax 021 426 5766

E-mail

### North West

Room 30309, 3<sup>rd</sup> Floor

West End Building, Klerksdorp

Tel. 018 464 3022

Fax 018 462 8607

E-mail

### Kwazulu Natal

4<sup>th</sup> Floor, Salisbury House

330 Smith Street, Durban

Tel. 031 304 3290 / 304 0100

Fax 031 304 3564 / 304 0471

E-mail

### Mpumalanga

34A Mark Street

Tel. 013 243 5964

Fax 013 282 1235

E-mail

## PART 5

### 1. Relevant Sections of the Rental Housing Act at a Glance

Key Words	Section / Subsections
Deposit	5 (3) (c); (d); (g); (i); (l); (m)
Discrimination	4 (1)
Eviction	13 (10)
House Rules	5 (8)
Illegal Action	13 (4) (c); 15
Inspection	4 (2)
Inspection	5 (3) (e); (f); (g); (j); (k)
Lease	5 (1); (2); (6)
Lockout	4 (5) (d) (ii); 15; 13 (4) (c)
Periodic Lease	5 (5)
Privacy	4 (3) (a); (b); (c); (d)
Privacy	4 (4)
Procedure to lodge a complaint	13 (1)
Receipts	5 (3) (a); (b)
Receipts	5 (3) (h); (n)
Requirements of lease cannot be waived	5 (6)
Ruling	10 (6); (7); (8)
Ruling	13 (4) (c)
Staff: powers delegated to decision can be set aside	11 (2) (3) (4)
Subpoena / Summons	13 (3) (d); (e) 16 (1) (b)
Termination of lease	4 (5)(c); (d)
Unfair Practice	15 (1) (f)
Unfair Practice	13 (1); (2); (4)
Witness	13 (3) (d)
Written Notice	5 (5)

## **2. Copy of Rental Housing Act, No 50 of 1999**

### **REPUBLIC OF SOUTH AFRICA**

### **GOVERNMENT GAZETTE**

VOL. 414

CAPE TOWN, 15 DECEMBER 1999

NO. 20726

OFFICE OF THE PRESIDENCY

NO. 1506

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

No. 50 of 1999: Rental Housing Act, 1999.

### **ACT**

To define the responsibility of Government in respect of rental housing property; to create mechanisms to promote the provision of rental housing property; to promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market; to make provision for the establishment of Rental Housing Tribunals; to define the functions, powers and duties of such Tribunals; to lay down general principles governing conflict resolution in the rental housing sector; to provide for the facilitation of sound relations between tenants and landlords and for this purpose to lay down general requirements relating to leases; to repeal the Rent Control Act, 1976; and to provide for matters connected therewith.

### **PREAMBLE**

WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996 everyone has the right to have access to adequate housing;

AND WHEREAS the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances;

AND WHEREAS no legislation may permit arbitrary evictions;

AND WHEREAS rental housing is a key component of the housing sector;

AND WHEREAS there is a need to promote the provision of rental housing;

AND WHEREAS there is a need to balance the rights of tenants and landlords and to create mechanisms to protect both tenants and landlords against unfair practices and exploitation;

AND WHEREAS there is a need to introduce mechanisms through which conflicts between tenants and landlords can be resolved speedily at minimum cost to the parties;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:-

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## CHAPTER 1

### INTRODUCTORY PROVISIONS

#### Definitions

1. In this Act, unless the context otherwise indicates -

“dwelling”, includes any house, hostel room, hut, shack, flat, apartment, room, outbuilding, garage or similar structure which is leased, as well as any storeroom, outbuilding, garage or demarcated parking space which is leased as part of the lease;

“financial institution” means a bank as defined in the Banks Act, 1990 (Act No. 94 of 1990);

“head of department” means the officer in charge of a department of the provincial government responsible for housing in the province;

“House Rules” means the rules in relation to the control, management, administration, use and enjoyment of the rental housing property;

“landlord” means the owner of a dwelling which is leased and includes his or her duly authorised agent or a person who is in lawful possession of a dwelling and has the right to lease or sub-lease it;

“lease” means an agreement of lease concluded between a tenant and a landlord in respect of a dwelling for housing purposes;

“MEC” means the member of the Executive Council of a province responsible for housing matters;

“Minister” means the Minister of Housing;

“periodic lease” means a lease for an undetermined period, subject to notice of termination by either party;

“prescribed” means prescribed by regulation by the MEC, by notice in the *Gazette*;

“regulation” means a regulation made in terms of section 15;

“rental housing property” includes one or more dwellings;

“Rental Housing Information Office” means an office established by a local authority in terms of section 14(1);

“tenant” means the lessee of a dwelling which is leased by a landlord;

“this Act” includes any regulation;

“Tribunal” means a Rental Housing Tribunal established under section 7;

“unfair practice” means a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord.

## CHAPTER 2

### PROMOTION OF RENTAL HOUSING PROPERTY

#### Responsibility of Government to promote rental housing

2. (1) Government must -

(a) promote a stable and growing market that progressively meets the latent demand for affordable rental housing among persons historically disadvantaged by unfair discrimination and poor persons, by the introduction of incentives, mechanisms and other measures that -

(i) improve conditions in the rental housing market;

(ii) encourage investment in urban and rural areas that are in need of revitalisation and resuscitation; and

(iii) correct distorted patterns of residential settlement by initiating, promoting and facilitating new development in or the redevelopment of affected areas;

(b) facilitate the provision of rental housing property in partnership with the private sector.

(2) Measures introduced in terms of subsection (1) must -

(a) optimise the use of existing urban and rural municipal and transport infrastructure;

(b) redress the inhibit urban fragmentation or sprawl;

- (c) promote higher residential densities in existing urban areas as well as in areas of new or consolidated urban growth; and
- (d) mobilise and enhance existing public and private capacity and expertise in the administration or management of rental housing.

(3) National Government must introduce a policy framework, including norms and standards, on rental housing to give effect to subsection (1).

(4) Provincial and local governments must pursue the objects of subsection (1) within the national policy framework on rental housing referred to in subsection (3), and within the context of broader national housing policy in a balanced and equitable manner and must accord rental housing particular attention in the execution of functions, the exercise of powers and the performance of duties and responsibilities in relation to housing development.

#### Measures to increase provision of rental housing property

3. (1) The Minister may introduce a rental subsidy housing programme, as a national housing programme, as contemplated in section 3(4)(g) of the Housing Act, 1997 (Act No. 107 of 1997), or other assistance measures, to stimulate the supply of rental housing property for low income persons.

(2) Parliament may annually appropriate to the South African Housing Fund an amount to finance such a programme.

(3) A separate account of income and expenditure in respect of such programme must be kept.

(4) Section 12(1)(b) of the Housing Act, 1997 (Act No. 107 of 1997), does not apply to any amount appropriated by Parliament for purposes of such programme.

## CHAPTER 3

### RELATIONS BETWEEN TENANTS AND LANDLORDS

#### General Provisions

4. (1) In advertising a dwelling for purposes of leasing it, or in negotiating a lease with a prospective tenant, or during the term of a lease, a landlord may not unfairly discriminate against such prospective tenant or tenants, or the members of such tenant's household or the *bona fide* visitors of such tenant, on one or more grounds, including race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth.

(2) A tenant has the right, during the lease period, to privacy, and the landlord may only exercise his or her right of inspection in a reasonable manner after reasonable notice to the tenant.

(3) The tenant's rights as against the landlord include his or her right not to have-

- (a) his or her person or home searched;
- (b) his or her property searched;
- (c) his or her possessions seized, except in terms of law of general application and having first obtained an order of court; or
- (d) the privacy of his or her communications infringed.

(4) The rights set out in subsection (3) apply equally to members of tenant's household and to *bona fide* visitors of the tenant.

(5) The landlord's rights against the tenant include his or her right to -

- (c) prompt and regular payment of a rental or any charges that may be payable in terms of a lease;
- (d) recover unpaid rental or any other amount that is due and payable after obtaining a ruling by the Tribunal or an order of a court of law;
- (e) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;
- (f) on termination of a lease to -
  - (i) receive the rental housing property in a good state of repair, save for fair wear and tear; and
  - (ii) repossess rental housing property having first obtained an order of court; and

- (g) claim compensation for damage to the rental housing property or any other improvements on the land on which the dwelling is situated, if any, caused by the tenant, a member of the tenant's household or a visitor of the tenant.

#### Provisions pertaining to leases

5. (1) A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 of 1969).

(2) A landlord, must if requested thereto by a tenant, reduce the lease to writing.

(3) A lease will be deemed to include terms, enforceable in a competent court, to the effect that -

- (a) the landlord must furnish the tenant with a written receipt for all payments received by the landlord from the tenant;
- (b) such receipt must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made, and whether payment has been made for rental, arrears, deposit or otherwise, and specify the period for which payment is made;
- (c) the landlord may require a tenant, before moving into the dwelling, to pay a deposit which, at the time, may not exceed an amount equivalent to an amount specified in the agreement or otherwise agreed to between the parties;
- (d) the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must subject to paragraph (g) pay the tenant interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with a financial institution, and the tenant may during the period of the lease request the landlord to provide him or her with written proof in respect of interest accrued on such deposit, and the landlord must provide such proof on request. Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act;
- (e) the tenant and the landlord must jointly, before the tenant moves into the dwelling, inspect the dwelling to ascertain the existence or not of any defects or damage therein with a view to determining the landlord's responsibility for rectifying any defects or damage or with a view to registering such defects or damage, as provided for in subsection (7);
- (f) at the expiration of the lease the landlord and tenant must arrange a joint inspection of the dwelling at a mutually convenient time to take place within a period of three days prior to such expiration with a view to ascertaining if there was any damage caused to the dwelling during the tenant's occupation thereof;
- (g) on the expiration of the lease, the landlord may apply such deposit and interest towards the payment of all amounts for which the tenant is liable under the said lease, including the reasonable cost of repairing damage to the dwelling during the lease period and the cost of replacing lost keys and the balance of the deposit and interest, if any, must then be refunded to the tenant by the landlord not later than 14 days of restoration of the dwelling to the landlord;
- (h) the relevant receipts which indicate the costs which the landlord incurred, as contemplated in paragraph (g), must be available to the tenant for inspection as proof of such costs incurred by the landlord;
- (i) should no amounts be due and owing to the landlord in terms of the lease, the deposit, together with the accrued interest in respect thereof, must be refunded by the landlord to the tenant, without any deduction or set-off, within days of expiration of the lease;
- (j) failure by the landlord to inspect the dwelling in the presence of the tenant as contemplated in paragraphs (e) or (f) is deemed to be an acknowledgement by the landlord that the dwelling is in good and proper state of repair, and the landlord will have no further claim against the tenant who must then be refunded, in terms of this subsection, the full deposit plus interest by the landlord;
- (k) should the tenant fail to respond to the landlord's request for an inspection as contemplated in paragraph (f), the landlord must, on expiration of the lease, inspect the dwelling within seven days from such expiration in order to assess any damages or loss which occurred during the tenancy;



- (l) the landlord may in the circumstances contemplated in paragraph (k), without detracting from any other right or remedy of the landlord, deduct from the tenant's deposit and interest the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys;
  - (m) the balance of the deposit and interest, if any, after deduction of the amounts contemplated in paragraph (l), must be refunded to the tenant by the landlord not later than 21 days after expiration of the lease;
  - (n) the relevant receipts which indicate the costs which the landlord incurred, as contemplated in paragraph (l), must be available to the tenant for inspection as proof of such costs incurred by the landlord; and
  - (o) should the tenant vacate the dwelling before expiration of the lease, without notice to the landlord, the lease is deemed to have expired on the date that the landlord established that the tenant had vacated the dwelling but in such event the landlord retains all his or her rights arising from the tenant's breach of the lease.
- (4) The standard provisions referred to in subsection (3) may not be waived by the tenant or the landlord.
- (5) 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.
- (6) A lease contemplated in subsection (2) must include the following information:
- (a) The names of the tenant and the landlord and their addresses in the Republic for purposes of formal communication;
  - (b) the description of the dwelling which is the subject of the lease;
  - (c) the amount of rental of the dwelling and reasonable escalation, if any, to be paid in terms of the lease;
  - (d) if rentals are not paid on monthly basis, then the frequency of rental payments;
  - (e) the amount of the deposit, if any;
  - (f) the lease period, or, if there is no lease period determined, the notice period requested for termination of the lease;
  - (g) obligations of the tenant and the landlord, which must not detract from the provisions of subsection (3) or the regulations relating to unfair practice;
  - (h) the amount of the rental, and any other charges payable in addition to the rental in respect of the property.
- (7) A list of defects registered in terms of subsection (3)(e) must be attached as an annexure to the lease as contemplated in subsection (2).
- (8) A copy of any House Rules applicable to a dwelling must be attached as an annexure to the lease.
- (9) A landlord must ensure that the provisions of subsections (6), (7) and (8) are complied with.

## CHAPTER 4

### RENTAL HOUSING TRIBUNAL

#### Application of Chapter

6. Unless a province has, before or after the commencement of this Act, enacted legislation providing for matters dealt with in this Chapter, this Chapter will apply to such province.

#### Establishment of Rental Housing Tribunals

7. The MEC may by notice in the *Gazette* establish a tribunal in the Province to be known as the Rental Housing Tribunal.

#### Functions of Tribunal

8. The Tribunal must fulfil the duties imposed upon it in terms of this Chapter, and must do all things necessary to ensure that the objectives of this Chapter are achieved.

## Composition of Tribunal

- 9.** (1) The Tribunal consists of not less than three and not more than five members, who are fit and proper persons appointed by the MEC, and must comprise -
- (a) a chairperson, who is suitably qualified and has the necessary expertise and exposure to rental housing matters;
  - (b) not less than two and not more than four members, of whom –
    - (i) at least one and not more than two shall be persons with expertise in property management or housing development matters; and
    - (ii) at least one and not more than two persons shall be persons with expertise in consumers matters pertaining to rental housing or housing development matters.
  - (c) a deputy chairperson, appointed by the MEC from the members referred to in paragraph (b) of this subsection.
- (2) The chairperson and members of the Tribunal must be appointed only after -
- (a) the MEC has through the media and by notice in the *Gazette* invited nominations of persons as candidates for the respective positions on the Tribunal; and
  - (b) the MEC has consulted with the relevant standing or portfolio committee of the Provincial Legislature which is responsible for housing matters in the province.
- (3) The MEC may appoint two persons to serve as alternate members of the Tribunal in the absence of any member referred to in paragraph (b) of subsection (1) but such persons must have the relevant expertise contemplated in paragraph (b) of subsection (1).
- (4) Any appointment in terms of subsection (1) or (3) must be for a period not exceeding three years but a person whose term of office as a member has expired may be reappointed by the MEC for an additional period not exceeding three years.
- (5) (a) Any vacancy in the office of a member of the Tribunal must, within one month of such vacancy occurring, be filled by the MEC appointing another member under subsection (1) or (3).
- (b) Any member so appointed holds office for the unexpired portion of the predecessor's term of office.
- (6) The MEC may at any time for reasons which are just and fair remove from office any member appointed under subsection (1) or (3) and appoint another person to the vacancy resulting therefrom in accordance with subsection (5).
- (7) A member or an alternate member of the Tribunal other than a person who is in the full-time employment of the State or an organ of state, must be appointed on the conditions of service determined by the MEC with the approval of the Member of the Executive Council responsible for provincial expenditure in the relevant province.
- (8) Conditions of service so determined may differ according to whether the person concerned is appointed on a full-time or part-time basis.
- (9) Members of the Tribunal must be reimbursed by the head of department out of funds appropriated in terms of section (12) (1) in respect of reasonable expenditure incurred in the exercise of their duties under this Act.

## Meetings of Tribunal

- 10.** (1) The Tribunal will sit on such days and during such hours and at such places as the chairperson of the Tribunal may determine.
- (2) Meetings of the Tribunal must be held or resumed at such times and places throughout the area of a Province as the chairperson may at any time determine.
- (3) A local authority may, at the request and at no cost to the Tribunal, make a venue available for meetings of the Tribunal.
- (4) Meetings of the Tribunal must be convened for the consideration of -
- (a) any complaint referred to the Tribunal in terms of section 13;
  - (b) any other matter which the Tribunal may or must consider in terms of this Act.
- (5) The quorum of any meeting of the Tribunal is three members, of which at least two members must be appointed in terms of subsection 9(1)(b)(i) and (ii), respectively.
- (6) All decisions of the Tribunal, subject to subsection (7), must be taken by consensus.

(7) Where consensus cannot be reached by the Tribunal, the decision of a majority of the members of the Tribunal must be the decision of the Tribunal.

(8) In the event of an equality of votes on any matter, the person presiding at the meeting of the Tribunal will have a casting vote in addition to that person's deliberative vote.

(9) A member or any alternate member of the Tribunal must not attend or take part in the discussions of or decision-making on any matter before the Tribunal in which he or she or his or her spouse, or his or her relative within the second degree of affinity, or his or her partner or his or her employer, other than the State, or the partner or the employer of his or her spouse, has any direct or indirect pecuniary interest.

(10) Minutes of the proceedings of the Tribunal must be kept and retained at the offices of the Tribunal.

(11) No decision taken by the Tribunal will be invalid merely by reason of a vacancy in the Tribunal or of the fact that any person not entitled to sit as a member of the Tribunal, sat as such a member at the time when the decision was taken, if the decision was taken by the majority of the members of the Tribunal present at the time and who were entitled to sit as members of the Tribunal.

(12) Any person may, in the prescribed manner, obtain copies of minutes contemplated in subsection (10) against payment of a prescribed fee.

## Staff

**11.** (1) The staff required for the proper performance of the Tribunal's functions and the administration of this Act, must be appointed subject to the laws governing the Public Service.

(2) The staff contemplated in subsection (1) may include inspectors, technical advisers, mediators and administrative support staff.

(3) Any person appointed in terms of subsection (1) must be provided with a certificate of appointment signed by or on behalf of the head of department.

(4) The Tribunal may, subject to such conditions as it may determine, delegate any powers conferred on it other than a power under section (13)(2)(d), (3), (4) and (5) to a member of the Tribunal or a person appointed in terms of subsection (1) but any such delegation will not preclude the Tribunal from exercising any such delegated powers itself, and the Tribunal may set aside or amend any decision of the delegate made in the exercise of such powers.

## Funding of and reporting on activities of Tribunal

**12.** (1) The activities of the Tribunal must be funded from moneys appropriated by the Provincial Legislature.

(2) The head of department is the accounting officer in respect of moneys appropriated in terms of subsection (1).

(3) An annual report on the activities of the Tribunal must be submitted by the chairperson of the Tribunal to the MEC as soon as possible after, but within four months of, 31 March in each year.

(4) The MEC may require the Tribunal to submit additional reports to him or her as the MEC may require from time to time.

(5) Any report referred to in subsection (3) must be tabled in the Provincial Legislature within 30 days after receipt thereof by the MEC if the Provincial Legislature is in ordinary session, or if the Provincial Legislature is then not in ordinary session, within 30 days of the commencement of the next ensuing ordinary session.

## Complaints

**13.** (1) Any tenant or landlord or group of tenants or landlords or interest group may in the prescribed manner lodge a complaint with the Tribunal concerning an unfair practice.

(2) Once a complaint has been lodged with the Tribunal, the Tribunal must, if it appears that there is a dispute in respect of a matter which may constitute an unfair practice –

(a) list particulars of the dwelling to which the complaint refers in the register referred to in subsection (8);

(b) through its staff conduct such preliminary investigations as may be necessary to determine whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice;

- (c) where the Tribunal is of the view that there is a dispute contemplated in paragraph (b) and that such dispute may be resolved through mediation, appoint a mediator, which may be a member of the Tribunal, a member of staff or any person deemed fit and proper by the Tribunal, with a view to resolving the dispute;
  - (d) where the Tribunal is of the view that the dispute is of such a nature that it cannot be resolved through mediation or where a mediator contemplated in paragraph (c) has issued a certificate to the effect that the parties are unable to resolve the dispute through mediation, conduct a hearing and, subject to this section, make such a ruling as it may consider just and fair in the circumstances.
- (3) For purposes of a hearing contemplated in paragraph (d) of subsection (2), the Tribunal may -
- (a) require any Rental Housing Information Office to submit reports concerning the inquiries and complaints received, as well as on any other matters concerning the administration of this Act within the area of jurisdiction of that office;
  - (b) require any inspector to appear before the Tribunal to give evidence, to provide information, or to produce any report or other document concerning inspections conducted which may have a bearing on any complaint received by the Tribunal;
  - (c) require any Rental Housing Information Office to advise the Tribunal on any matter concerning a dwelling or concerning a complaint received from any landlord or any tenant within the area of jurisdiction of that office;
  - (d) summon any tenant or landlord or any other person who, in the Tribunal's opinion may be able to give evidence relevant to a complaint, to appear before the Tribunal;
  - (e) summon any person who may reasonably be able to give information of material importance concerning a complaint or who has in such person's possession or custody or under such person's control any book, document, or object to attend its proceedings and to produce any book, document or object in his or her possession or custody or under his or her control, to give evidence or to provide information under his or her control;
  - (f) call upon and administer an oath to, or accept an affirmation from, any person present at the meeting in terms of paragraph (a), (b) or (c), or who has been summoned in terms of paragraph (d) or (e).
- (4) Where a Tribunal, at the conclusion of a hearing in terms of paragraph (d) of subsection (2) is of the view that an unfair practice exists, it may -
- (a) rule that any person must comply with a provision of the regulations relating to unfair practices;
  - (b) where it would appear that the provisions of any law have been or are being contravened, refer such matter for an investigation to the relevant competent body or local authority;
  - (c) make any other ruling that is just and fair to terminate any unfair practice, including, without detracting from the generality of the foregoing, a ruling to discontinue –
    - (i) overcrowding;
    - (ii) unacceptable living conditions;
    - (iii) exploitative rentals; or
    - (iv) lack of maintenance.
- (5) A ruling contemplated in subsection (4) may include a determination regarding the amount of rental payable by a tenant, but such determination must be made in a manner that is just and equitable to both tenant and landlord and takes due cognisance of -
- (a) prevailing economic conditions of supply and demand;
  - (b) the need for a realistic return on investment for investors in rental housing; and
  - (c) incentives, mechanisms, norms and standards and other measures introduced by the Minister in terms of the policy framework on rental housing referred to in section 2(3).
- (6) When acting in terms of subsection (4), the Tribunal must have regard to -
- (a) the regulations in respect of unfair practices;
  - (b) the common law to the extent that any particular matter is not specifically addressed in the regulations or a lease;
  - (c) the provisions of any lease to the extent that it does not constitute an unfair practice;
  - (d) national housing policy and national housing programmes; and
  - (e) the need to resolve matters in a practicable and equitable manner.

(7) As from the date of any complaint having been lodged with the Tribunal, until the Tribunal has made a ruling on the matter or a period of three months has elapsed, whichever is the earlier -

- (a) the landlord may not evict any tenant, subject to paragraph (b);
- (b) the tenant must continue to pay the rental payable in respect of that dwelling as applicable prior to the complaint or, if there has been an escalation prior to such complaint, the amount payable immediately prior to such escalation; and
- (c) the landlord must effect necessary maintenance.

(8) The Tribunal must keep a register of complaints received and complaints resolved with such details as may be prescribed and quarterly provide the local authority in whose jurisdictions dwellings are situated in respect of which complaints have been received with a list of complaints received and complaints resolved in such format as may be prescribed.

(9) As from the date of the establishment of a Tribunal as contemplated in section 7, any dispute in respect of an unfair practice, must be determined by the Tribunal unless proceedings have already been instituted in any other court.

(10) Nothing herein contained precludes any person from approaching a competent court for urgent relief under circumstances where he or she would have been able to do so were it not for this Act, or to institute proceedings for the normal recovery of arrear rental, or for eviction in the absence of a dispute regarding an unfair practice.

(11) A magistrate's court may, where proceedings before the court relate to a dispute regarding an unfair practice as contemplated in this Act, at any time refer such matter to the Tribunal.

(12) The Tribunal may -

- (a) make a ruling as to costs as may be just and equitable; and
- (b) where a mediation agreement has been concluded pursuant to section 13(2)(c), make such an agreement a ruling of the Tribunal.

(13) A ruling by the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrate's Court Act, 1944 (Act No. 32 of 1944).

#### Information Offices

**14.** (1) A local authority may establish a Rental Housing Information Office to advise tenants and landlords in regard to their rights and obligations in relation to dwellings within the area of such local authority's area of jurisdiction.

(2) A local authority may, subject to the laws governing the appointment of local government officials, appoint officials to carry out any duties pertaining to such Rental Housing Information Office.

(3) The functions of a Rental Housing Information Office are to -

- (a) educate, provide information and advise tenants and landlords with regard to their rights and obligations in relation to dwellings within its area of jurisdiction;
- (b) provide advice to disputing parties on reaching solutions to problems relating to dwellings;
- (c) refer parties to the Tribunal;
- (d) comply with any request of the Tribunal in terms of section 13; and
- (e) keep records of enquiries received by the office and to submit reports in relation thereto to the Tribunal on a quarterly basis.

#### Regulations

**15.** (1) The MEC may, after consultation with the relevant standing or portfolio committee of the Provincial Legislature responsible for housing matters in the province, by notice in the *Gazette*, make regulations relating to -

- (a) anything which may or must be prescribed under Chapter 4;
- (b) the procedures and manner in which the proceedings of the Tribunal must be conducted;
- (c) the forms and certificates to be used;
- (d) the notices to be given by the Tribunal in the performance of its functions, powers and duties;
- (e) the functions, powers and duties of inspectors for the purpose of carrying out the provisions of this Act;
- (f) unfair practices, which, amongst other things may relate to –
  - (i) the changing of locks;
  - (ii) deposits;

- (iii) damage to property;
- (iv) demolitions and conversions;
- (v) eviction;
- (vi) forced entry and obstruction of entry;
- (vii) House Rules, subject to the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), where applicable;
- (viii) intimidation;
- (ix) issuing of receipts;
- (x) tenants committees;
- (xi) municipal services;
- (xii) nuisances;
- (xiii) overcrowding and health matters;
- (xiv) tenant activities;
- (xv) maintenance;
- (xvi) reconstruction or refurbishment work; or

(g) anything which is necessary to prescribe in order to achieve the purposes of this Act.

(2) At least one month prior to the publication of any regulations contemplated in subsection (1), the MEC must by notice in the *Gazette* set out the MEC's intention to publish regulations in the form of a Schedule forming part of such notice setting out the proposed regulations, and inviting interested persons to comment on the said regulations or make any representations which they may wish to make in regard thereto.

## CHAPTER 5

### GENERAL PROVISIONS

#### Offences and penalties

16. (1) Any person who -

- (a) fails to comply with sections 4 or 5(2) or (9);
- (b) has been duly summonsed under section 13 and who fails, without sufficient cause –
  - (i) to attend at the time and place specified in the summons; or
  - (ii) to remain in attendance until excused by the Tribunal from further attendance;
- (c) has been called upon, in terms of section 13(3)(f) and who refuses to be sworn or to make an affirmation as a witness;
- (d) fails, without sufficient cause –
  - (i) to answer fully and satisfactorily any question lawfully put to any such person in terms of section 13(3);
  - (ii) to produce any book, document or object in any such person's possession or custody or under any such person's control which any such person was required to produce in terms of section 13(3)(e);
- (e) with intent to deceive the Tribunal, produces before the Tribunal any false, untrue, fabricated or falsified book or document;
- (f) wilfully furnishes the Tribunal with information, or makes a statement before the Tribunal, which is false or misleading;
- (g) fails to comply with any ruling of the tribunal in terms of section 13(4);
- (h) fails to comply with a request of the Tribunal in terms of section 13(3)(a)(b) or (c); or
- (i) contravenes any regulation,

will be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both such fine and such imprisonment.

#### Review

17. Without the prejudice to the constitutional right of any person to gain access to a court of law, the proceedings of a Tribunal may be brought under review before the High Court within its area of jurisdiction.



## Repeal and amendment of laws

**18.** The laws specified in the Schedule are repealed or amended to the extent indicated in that Schedule.

## Savings

**19. (1)** Despite section 18 -

- (a) a tenant of rent controlled premises as defined in section 1 of the Rent Control Act, 1976 (Act No. 80 of 1976), may not be evicted or caused to vacate the premises –
  - (i) unless the tenant has committed a breach of lease, or
  - (ii) except under the circumstances and in the manner contemplated in section 28 of that Act, and
- (b) the rent of such premises may not be increased by more than ten per cent per annum, for a period of three years commencing on the date of commencement of this Act.

(2) During the period of three years referred to in subsection (1) the Minister must -

- (a) monitor and assess the impact of the application of that subsection on poor and vulnerable tenants; and
- (b) take such action as he or she deems necessary to alleviate hardship that may be suffered by such tenants.

(3) For purposes of subsection (2) the Minister may define criteria based on age, income or any other form or degree of vulnerability that apply to such tenant or group of tenants and amend or augment the policy framework on rental housing, referred to in section 2(3), by introducing a special national housing programme to cater for the needs of affected tenants that comply with the criteria defined in terms of this subsection.

## Short title and commencement

**20. (1) This Act is called the Rental Housing Act, 1999, and comes into operation on a date determined by the President by proclamation in the *Gazette*.**

(2) In applying subsection (1) different sections of the Act may come into effect on different dates and different dates may be determined for different provinces.

## Schedule

### LAWS REPEALED OR AMENDED BY SECTION 18

No. and year of law	Short title	Extent of amendment or repeal
Act No. 80 of 1976	Rent Control Act, 1976	The whole
Act No. 23 of 1989	Rent Control Amendment Act, 1989	The whole
Act No. 132 of 1993	General Law Fourth Amendment Act, 1993	Section 26
Act No. 95 of 1986	Sectional Titles Act, 1986	Section 53
Act No. 95 of 1986	Sectional Titles Act, 1986	Section 10(1) by the deletion of the words: “or, in the case of a unit which is controlled premises referred to in the Rent Control Act, 1976 (Act No. 80 of 1976), and is subject to the provisions of that Act, within a period of 365 days, of the date of offer, of has, on the expiration of any such applicable period, not accepted the offer”

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Share Blocks Control Act, No. 59 of 1980

# ABOUT THE ORGANISATION OF CIVIC RIGHTS -

## TYPE OF ORGANISATION

The OCR is a community organisation formed in 1984 and is involved in: -

- Tenants rights
- Homeless
- Inner city redevelopment
- Anti-crime & other community issues
- Social facilitation

19 YEARS LATER, the OCR continues to work with the disadvantaged, the elderly, the poor and those suffering as a result of unjust socio-economic conditions and laws. The OCR,

- Provides a nation-wide service to tenants.
- Conducts workshops nation-wide to empower and educate tenants.
- Runs internship programmes with students from tertiary institutions.
- Provides placement for local and overseas post-graduate students
- Conducts research on the homeless community, tenants & crime issues.
- Help form flat & street committees.

## VISION AND POLICY

The OCR as a community based NGO is committed to developing a better and just society by making a significant and distinctive contribution at regional, provincial and national levels through active grassroots involvement in improving

- (i) the condition of tenants and the homeless community
- (ii) the safety, security and health of residents.

These commitments are expressed through various programme interventions, advice, research, legal and paralegal intervention and representation, lobbying for positive changes, capacity building, education and empowerment.

## SOME OF OCR'S ACHIEVEMENTS

- ◆ Organising, educating & empowering tenants, the homeless & residents.
- ◆ Founding member and co-ordinator of various anti-crime & redevelopment forums.
- ◆ Successful representations at rent board.
- ◆ Arbitration between landlord and tenants.
- ◆ On going discussions at central, provincial & local governments.
- ◆ Networking with civics and other relevant groups regionally, nationally and internationally.
- ◆ A major stakeholder on new legislation for landlords & tenants.
- ◆ Various High Court actions resulting in the:
  - ◆ reintroduction of rent boards nationally (1986); rent control in Warwick Avenue (1993)
  - ◆ reinstatement of displaced tenants
  - ◆ reconnection of services
  - ◆ took up the plight of fleamarket traders, exposed corruption, had the market master and officials removed.
  - ◆ addressed the plight of "sweatshop" tenants.

## AT NATIONAL GOVERNMENT LEVEL

**1984–1989:** OCR was in the forefront for the abolition of the Group Areas Act and stopped the harassment of "mixed" couples & forced evictions.

**1995–1999:** Brought about changes in the composition of rent boards.

**1995–1999:** OCR substantial contribution to landlord-tenant law (the Rental Housing Act 50 of 1999) and the provincial Rental Housing tribunals; served on the national task team to advise the Minister of Housing.

**2000–2002:** Contributed to protecting the rights of sectional title owners (Local Government Property Rates Bill

**2003–2006:** Social facilitation – multi-million rand upgrade of municipal housing; community sales facilitation.

