

A LANDLORD'S RIGHT TO TERMINATE A RESIDENTIAL LEASE AND EVICT TENANTS, EXPLAINED.

The landscape of the process of residential evictions in South Africa has changed dramatically. With landmark judgments of *NK Luanga v Perthpark Properties* [2019] JOL 43180 (WCC), *Pure Capital Property Trading CC v Hanslo and Others* [2018] ZAWCHC 137 and *Phillips v Grobler and Others* [2019] ZAWCHC 157, it has become increasingly difficult and expensive to obtain eviction orders. There is a greater emphasis on reasonable notice periods, alternative housing options and placing all the personal circumstances of the tenants (illegal occupants) before the court, before the application can be considered.

This article will deal with the rights of the landlord to terminate residential leases and evict tenants vis-à-vis, the Constitutional rights of tenants, the Consumer Protection Act 68 of 2008, ("the CPA"), the Rental Housing Act 50 of 1999, ("the RHA"), and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ("the PIE Act"). It will briefly explain these rights and the crucial aspects of the process.

Section 26(3) of the Constitution of the Republic of South Africa, 1996, ("the Constitution"), provides that, "[n]o one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances". This section also applies to tenants or illegal occupants of a property.

According to Section 14 the Consumer Protection Act 68 of 2008, ("CPA"), a landlord can only terminate a lease agreement at two instances. The first instance is, that a landlord can terminate at its own accord. In such an instance, two calendar months' notice needs to be given; and the second instance is, that a landlord can terminate a lease agreement for a material breach made by the tenant. In such an instance 20 business days' notice of cancellation has to be provided in order to give the tenant time to remedy the breach. Should the tenant not remedy the breach, then cancellation will be effected and other legal proceedings can follow, like eviction.

Once a lease agreement has been lawfully cancelled, the tenant becomes an "unlawful occupant" in the eyes of the law. The landlord must then provide the unlawful occupier with sufficient notice of the eviction application. Section 5(5) of the RHA provides that one calendar months' notice (starting from the first day of the month) needs to be provided to the tenant before bringing an eviction application.

Once the procedural time period for notice are completed, a PIE eviction application can be brought. It important that the application deals with the personal circumstances of the unlawful occupiers, alternative housing and the housing report from the municipality and that reasonable notice has been given to the unlawful occupant/s to vacate the property.

It is therefore pertinent that a landlord contacts his/her legal practitioner from the stages of termination of a lease agreement and throughout the eviction process to ensure that the process strictly follows the rules, the judgements and will not be later set aside by a court. Such an application can take many months, even a year, depending on the complexities of the case. Such a process is expensive, and we advise that you contact your legal practitioner to assist you.

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