PROPERTY LAW

Lease Agreements

A lease agreement is entered into when one person, the landlord, gives use and enjoyment of his/her property (for example, a house, flat or room) to another person, the tenant, for a specific period of time in return for the payment of rent.

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A guide to lease agreements in South Africa:

1. When is a lease agreement entered into?
2. What are the obligations of the landlord?
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4. When may a lease agreement be terminated or cancelled?
5. What does subletting mean?
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1. When is a lease agreement entered into?

- A lease agreement is entered into when one person ("landlord") gives use and enjoyment of his/her property to another person ("tenant") for a specific period of time in return for the payment of rent.
- It is not a requirement for the lease agreement to be in writing. However, it is important to get it in writing as a verbal lease agreement may be difficult to prove if there is a dispute about it.

- The Rental Housing Act (“Act”) applies to a lease agreement entered into for housing purposes. In terms of the Act, a landlord must provide his/her tenant with a written lease agreement on the tenant’s request. The Act does not apply to a lease agreement entered into for business purposes.
- The landlord and the tenant are bound by the terms contained in the lease agreement. However, there are certain obligations that will automatically apply to the landlord and the tenant if these obligations are not specifically excluded in the lease agreement.

2. What are the obligations of the landlord?

- To deliver the property to the tenant for his/her use and enjoyment – the landlord must deliver everything necessary for the tenant to use and enjoy the property, for example, the keys, remotes and so on.
- To maintain the property in a good order and condition for the duration of the lease agreement – the tenant should report any defects in respect of the property to the landlord.
- To ensure the tenant’s undisturbed use and enjoyment of the property (in other words, ensure the privacy of the tenant) – except where the landlord notifies the tenant prior to such disturbance or where it is specifically provided for in the lease agreement (for example, in the event of repairs being necessary or inspection being conducted).
- To warrant the tenant against eviction from a third person – unless the tenant had knowledge of the third person’s better title (for example, the landlord not being the owner of the property).
- To pay the property’s rates and taxes imposed by the municipality, unless otherwise agreed to in the lease agreement (for example, refuse, electricity and so on).

3. What are the obligations of the tenant?

- To pay the agreed rent to the landlord – the date and method of payment should be specified in the lease agreement and whether the rent is payable in arrear or advance.
- To take proper care of the property and not to use it for any other purpose than that for which it was leased. For example, to only use the property for housing purposes, not to create a nuisance, and so on.
- To return the property in the same good order and condition as it was in when s/he received it – except for reasonable wear and tear (the tenant may not be held liable for damage caused by a third person or for damage that was not his/her fault).
- To vacate the property on termination of the lease agreement.

4. When may a lease agreement be terminated or cancelled?

- A lease agreement terminates on its expiry date or when it is cancelled by notice in the event of breach, death or insolvency.
- If the landlord or tenant fails to meet his/her obligations in terms of the lease agreement, it would be considered a breach and the other person may rely on the following remedies:
    - Notify the person in writing to fix his/her breach within a certain period of time.
    - If the relevant person fails to fix his/her breach within the time provided, to either:
        - keep the lease agreement in place and sue for specific performance and/or claim for damages; or
        - cancel the lease agreement and sue for damages and/or eviction of the tenant where s/he is still staying in the property.

5. What does subletting mean?

- Subletting (sublease) is where the tenant enters into a lease agreement with a third person, in terms of which s/he allows that third person to use and enjoy the landlord’s property in return for payment of rent.
- Unless the primary lease agreement provides otherwise, the tenant is entitled to sublet the property without the consent of the landlord.
- If the tenant sublets the property, there are two lease agreements that exist. The first is the primary lease agreement between the landlord and the tenant. This agreement continues to exist and the tenant retains all his/her obligations under it. In particular, s/he remains liable for the payment of the rent to the landlord. The second is the sublease agreement between the tenant and the third person. The sublease terminates as soon as the primary lease agreement comes to an end.
- If the primary lease agreement specifically excludes subletting and the tenant proceeds to sublease the property without the landlord’s consent, the sublease will be void. The sublease will then be considered a breach of the primary lease agreement and entitles the landlord to cancel the primary lease agreement.

6. What does a landlord’s hypothec mean?

- A landlord has a right over the belongings of his/her tenant in the event of the tenant owing him/her money; this right is called a hypothec.
- A hypothec allows a landlord to approach the court for an order to attach and remove the belongings of his/her tenant with the assistance of the sheriff. The sheriff will then sell the tenant's belongings in order to satisfy the landlord's arrear rent. This order serves as an interdict preventing the tenant from removing his/her belongings, prior to the sale by the sheriff.

7. What is the Rental Housing Tribunal?

- The Rental Housing Tribunal is an independent body that resolves disputes of unfair practices between landlords and tenants.

8. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or to join visit our join now page.

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