



LEASE AGREEMENTS

Entering into a Lease Agreement is an important commitment to make, and the challenges relating thereto might seem insignificant at the time, but may lead to major financial burdens, if not approached correctly.

The right of access to adequate housing, as contained in our Constitution, controls the relationship between a Landlord and a Tenant. The Rental Housing Act, No. 50 of 1999 (the “RHA”) was passed in order to make provision for our constitutional right to adequate housing, by setting out the rights and obligations between Landlords and Tenants.

The Rental Housing Act determines the minimum requirements which should be contained in a Lease Agreement (sometimes referred to as a rental Agreement or a Lease Agreement). It further outlines the rights and responsibilities of both the Landlord and the Tenant and their relationship, and also provides information as to how to cancel or terminate a lease.

In this guide we will highlight the most important aspects of entering into a Lease Agreement.

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A Lease Agreement regulates the contractual relationship between a Landlord and a Tenant, whereby the Landlord provides the Tenant with occupation and enjoyment of the property of the Landlord, in return for the payment of a specified rental amount.

It is not necessary for a lease agreement to be in writing to be valid and enforceable, however we highly recommend that all agreements pertaining to the lease of immovable property be reduced to writing, and signed by both parties, as the content of verbal agreements can be very difficult to prove.



The following terms must be agreed upon for any Lease Agreement to be valid:

- 1 The specifics, such as the address and type of property, which is to be leased / occupied;
- 2 The different aspects of the Tenant's rights to use and enjoy the property;
- 3 The Tenant's acceptance of the use and enjoyment of the property;
- 4 The temporal nature of the use and enjoyment of the property; and
- 5 The rental amount to be paid in return for the use and enjoyment of the property.

REQUIREMENTS FOR A WRITTEN LEASE AGREEMENT

The Rental Housing Act, requires specific conditions to be included into a Lease Agreement and requires the obligations, duties and responsibilities of both the Landlord and Tenant to be mentioned and agreed upon in the Lease Agreement. These obligations have to be adhered to.

The lease agreement must identify the landlord and the tenant, the property to be leased, the amount of rent to be paid by the tenant, the duration (period) of the lease, when the rent is payable, the consequences, and so forth.

A written Lease Agreement must contain the following:

- A clear identification of both the Landlord and the Tenant;
- The specifics of the property to be leased;
- The rental amount to be paid to the Landlord;
- The duration / period of the lease;
- The date(s) when the rent is due and payable;
- The consequences of failure to comply with the terms of the agreement; and
- The terms and conditions applicable to the termination of the agreement.

IMPORTANT CLAUSES OF A LEASE AGREEMENT CLARIFIED


1 Deposit required

The Landlord may require the Tenant to pay a deposit before taking occupation of the premises. The deposit is intended to be security for the Landlord to cover any outstanding rent, repair costs in respect of any damages the Tenant caused to the property, and the replacement of any lost keys. Therefore, before a Tenant moves into a leased property, the property must be inspected by both the Landlord and Tenant and a comprehensive list of all defects must be compiled, signed and attached to the Lease Agreement. The Landlord is obliged to invest the deposit in an interest-bearing account for the benefit of the Tenant.

Occupation is not a requirement for a valid and binding Lease Agreement. This has the effect that even if the Tenant paid the required deposit, the Lease Agreement will remain valid and binding, whether or not the Tenant has chosen to take occupation of the leased premises or not.

2 Lease Period (Fixed/Periodic Term)

Most of the Lease Periods / Fixed or Periodic Terms, are for a certain specific period of time (e.g. one year), which means that the Lease Agreement will expire at the end of this period, as is stated

A person in a white shirt is holding a small model of a house. The background is blurred, showing the person's hands and the model house on a table.

in the Lease Agreement. Should the parties wish to extend the Lease Period, the parties will need to enter into a new lease agreement at the time.

When the Lease Agreement is for a fixed term, and the parties neglect to enter into a new Lease Agreement after the fixed term expired, the lease will continue on a month to month basis. One calendar month's notice is required to terminate the lease agreement. Take note that notice must be given on the first day of a month.

In the event that a lease agreement does not contain a termination clause, the parties will not be able to cancel the lease without consequences. The Consumer Protection Act however provides the Tenant with the option to cancel the lease by giving 20 business days' notice to the Landlord, subject to the payment of a reasonable penalty amount. A reasonable penalty amount usually amounts to one to two months' rental and it is advisable to contractually agree to the penalty amount when concluding the lease agreement.

When the lease is for an undetermined period (a 'periodic lease'), the party who wishes to end the lease, must give 20 business days' notice to the other party of his intention to terminate the lease in accordance with the Consumer Protection Act.

3 Tenant's obligations

All the Tenant's obligations must be specified in the Lease Agreement. Should the property be subject to House/Body Corporate Rules, these rules have to be attached to Lease Agreement for it to be enforceable. Examples of these obligations include that the Tenant:

- Pay the agreed rent;
- Return the property in the same condition as it was, when the Tenant took occupation of the property, except for reasonable wear and tear to the property;
- Vacate the property on date of termination and/or cancellation of the Lease Agreement, etc.

4 Landlord's obligations


The obligations of a Landlord are set out in the Rental Housing Act, and it is therefore not necessary to incorporate a Landlords' obligations into a Lease Agreement. Examples of these obligations include, that a Landlord:

- Ensures that the property is in an appropriately acceptable condition when the Tenant occupies the property;
- Provides a written Lease Agreement upon request;
- Respects the Tenant's right to privacy and provide undisturbed use and enjoyment of the property;
- Maintain the property in a good order and condition for the full duration of the Lease Agreement.

5 Eviction Proceedings

It is crucial to also include a so-called breach clause in the Lease Agreement, which will regulate the process and steps to be taken should one of the parties breach the terms of the Lease Agreement.

Should a Tenant fail to comply with his/her obligations in terms of the Lease Agreement (e.g. fails to pay rent), the Landlord may take legal steps to evict the tenant, but may not do so without a court order.



The Landlord will need to instruct an attorney to send a letter of demand and a subsequent letter of cancellation to the Tenant. If the Tenant fails to vacate the premises on the terms and date as required in the letter of cancellation, the attorney will make an application to court to have the Tenant evicted in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998.

The eviction process is a complicated and specialised process, and it is advisable that you consult with us immediately upon breach of the Lease Agreement by the Tenant.

As specialist Property Attorneys, we act for Landlords, Property Managers and Rental Agents regarding tenant disputes and evictions.

FREQUENTLY ASKED QUESTIONS:

- Who is responsible for the payment of municipal services?
- What happens when the water and/or electricity gets cut off?
- What is a Rental Housing Tribunal and what is the purpose thereof?
- Can I withhold payment of the rental?
- What can I do when rental is paid late?
- Which repairs are the Tenant's responsible during the lease period?
- What happens when the Tenant stays in the property after the expiration of the lease?
- What are the repercussions for the Landlord if he/she forcibly removes the Tenant from the property without following the correct eviction proceedings?
- What are the repercussions if the Landlord fails to inspect the property before occupation is granted?
- What happens if the Landlord and the Tenant cannot inspect the property at the same time?
- What can the deposit be utilised for?
- Can the deposit be utilised for the last month's rental?
- What constitutes disturbance or interference by the Landlord?
- What can the Tenant do, if the Landlord trespasses?
- What is a Landlords lien?
- What happens when there is a change of ownership of the property?

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