

# LANDLORD RESPONSIBLE FOR PREMISES' SAFETY

## INDEMNITIES INCLUDED IN LEASE FOUND LEGALLY INVALID

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A LEASE between parties grants a tenant the legal right to possess the dwelling as a temporary owner.

The tenant has the right to undisturbed use and enjoyment, physical control over the property and unhindered possession. If the peaceful possession is disturbed, the tenant has certain remedies.

The tenant is entitled to a rental reduction, or even to withhold rental in certain instances when the use and enjoyment is disturbed by the landlord or landlady.

The landlord's failure to carry out necessary repairs or shutting off the supply of basic services such as water or electricity interferes with the tenant's use and enjoyment.

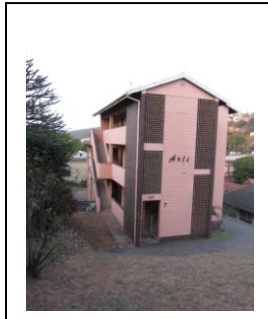
The courts are the best authority to decide what amount should be deducted or withheld.

A landlord who enters his 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.

A tenant can stop the landlord by approaching the court for an interdict.

**What remedy does a tenant have when she or he suffers personal injury due to the landlord's negligence to maintain the property?**

The tenant cannot withhold rental or deduct from the rental for personal injuries sustained. An interdict will not be appropriate in this instance either.



The tenant will have a damages claim for personal injury from the landlord for his wrongful act.

The courts apply certain principles to establish if the landlord was liable for the injury. In other words, what did the landlord do or failed to do, and, was this conduct unlawful?

Also of importance is to establish whether the landlord owed the tenant a legal duty to ensure his safety. The court will then examine whether the landlord's unlawful conduct was unlawful, in that it was intentional or the result of his negligence.

A lease contract may have clauses to protect the landlord from being sued by the tenant.

The following is an example of what may be included in a clause to 'protect' the landlord from being held liable: -

- The landlord shall not be responsible for any damage or loss sustained or suffered by the tenant, the tenant's visitors or family members, due to any act, omission or neglect on the part of the landlord.
- The tenant further indemnifies the landlord for any loss or injury sustained by reason of the dwelling or the building falling into a state of disrepair or requiring repairs to be undertaken or for the interruption of services such as water and electricity.

The court can order a landlord to compensate his tenant despite a lease with an exclusion or exemption clause like the one above.

One tenant, Mr. Swinburne of flat 5 Arli Court, Channel View Road, on the Bluff in Durban successfully sued his landlord for the injury he sustained on the night of April 16, 2006.

Swinburne sustained a severe fracture in his left leg (of the tibia) when he slipped and fell down the flight of stairs into the courtyard.

The tenant had successfully negotiated the stairs but the sand that had accumulated on the top level due to heavy rain, caused him to lose balance. The absence of a handrail led to him fall down the flight of stairs into the court yard.

The judge did not accept the argument that the landlord was not liable since there was another access, being the main entrance, which Swinburne could have used.

The second argument was also rejected that the landlord cannot be held responsible when it was apparently obvious that due to the heavy rain, the stairs were not safe to use.

According to Judge Wallis, a landlord is responsible for ensuring safety for all users of the property.

"It is clear that the owner of property is ordinarily liable to ensure that the property does not present undue hazards to persons who may enter upon and use the property. In other words, it is the owner's legal duty to ensure that the premises are safe for those who use them."

"That is so whether one is dealing with trespassers, invitees, or others who may have a right to enter upon the property, such as tenants. There are a number of instances where our courts have imposed upon an owner of property such a legal duty in relation to the condition of stairs and staircases."

The third defence the landlord relied on were two exclusion clauses.

Here the judge examined the clauses thoroughly and concluded that these did not exclude liability.

In a judgment delivered on April 22, 2010 (in *Swinburne v Newbee Investments (Pty) Ltd* [2010] 4 All SA 96 (KZD)) the court found the landlord, Newbee Investments (Pty) Ltd was liable for the damages suffered by the tenant and ordered compensation and legal costs.