

EXERCISING OPTION TO RENEW A LEASE

Renewal clause confers legal right to continue tenancy until specified, or deal's expiry

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DOES a right of renewal bind an 'innocent' purchaser to an existing lease?

To put it another way, a purchaser is not informed of a written lease for a fixed period. In fact, she is misled into believing that the tenancy is a monthly one and terminable at a calendar month's notice. The purchaser is also unaware that there is a renewal clause.

A renewal clause cannot be separated from the lease itself. The court in *Shalala and Another v Gelb* [1949 AD 851] arrived at the decision that the right to renew clause is an inseparable part of the lease. The right to renew in a lease is linked to the tenant's right to occupy. The buyer/owner who is misled by the seller/previous owner-landlord is bound by a right of renewal.

"An option to purchase contained in his lease confers upon the tenant the right to acquire *dominium* of the property: the option to renew relates to an extension of the tenant's right of occupation of the property to the continuation of the relationship of landlord and tenant." (*Dominium* refers to the right of ownership of a property and its control.)

In *Uys & another v Sam Friedman Ltd* 1935 AD, the Appellate Division (now known as the Supreme Court of Appeal) settled the tenant's right to a renewal clause as follows:-

- The right to renew is no different from any other term or condition of a lease.

- A renewal clause is not severable from the lease.
- A tenant's right to renew can be exercised, even if the landlord is insolvent.
- A trustee of an insolvent landlord is bound by a renewal clause.

(*Dominium* refers to the right of ownership of a property and its control)

Renewal clause

Let us examine a renewal clause in the fixed lease for a period of two years.

The tenant was given the option to renew the lease for a further two years, provided she informed the landlord in writing of such intention, two calendar months before the lease ran its full term.

We will look at three possible types of renewal, one without changes to the extended lease and two with changes.

Example 1:

Renewed lease would be on the same terms and conditions:

"The tenant has the right to renew this lease for a further two years, on the same terms and conditions contained in the original lease, provided she notifies the landlord in writing two calendar months before the expiry of the lease."

Example 2:

The renewal of the lease would be conditional:

"The tenant has the right to renew this lease for a further two years, on

condition that she has not breached the lease. She must notify the landlady in writing two calendar months before the lease expires of her intention to renew this lease.”

Example 3: “The tenant has the right to renew this lease for a further two years, notifying the landlady in writing two calendar months before the lease expires of his intention to renew this lease. The rental under the renewed lease will be R2500.00 per month with no further option to renew.”

The tenant in exercising the option must remember that the rules of offer and acceptance apply.

The tenant who sends the letter of renewal by registered post (as required by the lease) to the landlord / landlady’s address as stipulated on the lease as the address of all communication, would have complied with proper service even if the landlord / landlady failed to notify the tenant of the change of address.

But the tenant who gives notice on April 2 when the lease terminates on May 31 has failed to provide two calendar month’s notice.

Is the new owner-landlord / landlady bound by the renewal clause?

The new owner, who buys the dwelling with the lease, as stated previously, becomes the landlord / landlady and the relationship between the tenant and the “new” landlord / landlady continues.

If the new owner was not aware of an existing lease, he or she is still bound to the lease but may have a delictual claim against the seller or some legal remedy available in such an instance.

The new owner acquires all the rights of the original or previous landlord / landlady under the lease.

The tenant is under obligation to carry out all the duties and responsibilities as if there was no change of ownership.

Rights and obligations are contiguous, the tenant and landlord / landlady mutually dependent.

The tenant’s rights must be reciprocated by the landlord / landlady’s performance of his obligation and the tenant must fulfil his/her duties and responsibilities emanating from the lease for the contractual terms and conditions to be realised.

In summary, the renewal of a lease must be separated from the landlord / landlady's intention to sell or the actual sale and subsequent transfer of the dwelling to the new owner.

The new landlord / landlady is in the same position as the previous landlord / landlady should there be a change of ownership during the fixed period and the tenant exercised his / her right to renew within the prescribed period required.

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