

HOW TO LEGALLY EVICT A TENANT

Are reasons strictly necessary?

UNTIL recently, our law seemed to have allowed the landlord or landlady to issue a notice to vacate without giving a reason.

A month-to-month tenant, for example, can be evicted on a calendar month's notice, without the landlord/ lady having to state or prove any cause or reason.

This calendar month's notice ends the tenancy. In short, the landlord/ lady is saying "This is my property, I want it back, I don't have to explain why- so get out."

Though this sounds unjust and ruthless, and may be so in certain instances, it was legal. However, in terms of the Rental Housing Act (RHA), the landlord/ lady can terminate a lease provided:

- (i) he or she has specified in the lease the grounds for terminating a lease; and
- (ii) no unfair practice exists for the termination of the lease.

How can a lease be terminated?

When notice is NOT required:

- *Mutual Agreement*

A lease agreement or tenancy can also be terminated by the landlord/ lady and tenant mutually agreeing to do so.

In this case, even if there is a written lease agreement, a written notice is not necessary.

The notice to end the lease can be conveyed verbally or can be implied from the conduct of the parties.

- *Fixed Period* (by effluxion of time)

When both the tenant and landlord/ lady have agreed in writing (in a lease agreement) that the tenancy is for a specific time' e.g. 1st January 2008 to 30th June 2008.

The landlord does not have to remind the tenant that he or she will have to vacate the dwelling at the agreed date, because the lease is for a fixed period.

The lease comes to an end on the last day agreed by the parties when they signed the lease.

When notice IS required:

Cancellation

- The landlord or tenant can cancel the lease when there is a major (material) breach, e.g. non-payment of rental¹
- Failure to allow the tenant free and undisturbed use and occupation of the premises.

By the giving of *Notice*

- A. The period of notice depends on the agreement between landlord and tenant.
- B. If there is no agreement of such a notice, then the notice is determined according to law in 2 ways:-
 - a) In a written lease there should be a clause in the lease that states the period of the notice;
 - b) If this clause is absent, then the law has laid down the following:-
 - i) for a day to day lease, the period is one day- because the rent is paid daily.
 - ii) for a weekly lease the period is one week- because the rent is paid weekly.
 - iii) for a monthly lease- the period is one month- because rent is paid monthly²
 - iv) for a lease longer than one month – the period depends on the circumstances³.

A calendar Month's Notice

A calendar month's notice⁴ means that a notice must be given not later than the first day of the month, informing the other party of the intention to vacate the dwelling at the end of that month. Similarly, a weekly periodic lease is ended by giving at least one week's notice; a day-to day lease requires at least 24 hours' notice.

That notice must be for a whole period; in other words, a notice given on the 22nd March to the end of the lease on the 22nd or 23rd April is not for a whole period- thus it is not a calendar month's notice.

The reference to “a 30-days notice” is confusing and certainly incorrect.

A periodic lease is therefore for a period: a day-to-day lease, weekly, monthly or yearly that starts on the first day of the period and runs to the last day, even if rental is paid at the middle of the period.

(From *Tenant and Landlord in South Africa* (January 2010 edition) by **Dr Sayed Iqbal Mohamed**, the chairperson of the Organisation of Civic Rights. For tenant's rights advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451.

¹ Yarram Trading cc t/a Tijuana Spur v Absa Bank Ltd 2006 SCA 160.

² Pareto Ltd and others v Mythos Leather Manufacturing (Pty) Ltd T/A Venucci 2000[3] All SA 286 [W].

³ To establish what the parties intended, courts may look at the surrounding circumstances of the contract entered into and the sub-subsequent conduct of the parties: Pangbourne Properties Ltd v Gill & Ramsden (Pty) Ltd 1996 [1] SA 1182 [A]; Snyman en Andere v Odendaalsrus Plaaslike Oorgangraad 1998 [2] SA 297 [O].

⁴ Fulton v Nunn 1904 TS 123; Pemberton NO v Kessell 1905 TS 174; Tiopaizi v Bulawayo Municipality 1923 AD 317; Stocks and Stocks Holdings Ltd and ANOTHER V Mphelo 1996 [2] SA 864 [T].