

# Owner is ultimately responsibly

## Lease must deal with services

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**IN THE absence of an express clause, in other words, if it is not stated in a written lease, who is liable for the payment of water and electricity charges to the municipality?**

The owner is liable to the municipality for payment under common law. These service charges are therefore due and payable by the owner to the municipality.

Services supplied by local authority to the property relates to the owner of the property or to its occupiers (*Proud Investments (Pty) Ltd v Lanchem International (Pty) Ltd* 1991 (3) SA 735 (A)).

For the occupiers to be liable there must be an agreement either between the owner and the occupier or between the occupier and the local authority. In the absence of such an agreement, it is implied that the owner would be burdened with the payment for such services.

### **Tenant or occupier is responsible**

Parties can change their obligations in a written lease contract, or even agree orally that the tenant would pay for certain services such as water or electricity. The owner or landlord usually requires the tenant to have the water and electricity account in his / her name so that the tenant is directly contracted to the local authority and liable for the payment of the consumption charges.

### **The Constitutional court judgment**

The Constitutional Court gave a judgment that ultimately holds the owner responsible for all outstanding amounts regarding consumption charges due to the local authority - even if the account is in the tenant or non-owner occupier's name.

In the *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 (1) SA 530 (CC) case, Yacoob J said,

“The basic reason for the accumulation of consumption charges due in connection with any property occupied by non-owners is non-payment by those occupiers. However, it is ordinarily possible for both the municipality and the owner to guard against an unreasonable accumulation of outstanding consumption charges.

“The municipality has a duty to send out regular accounts, develop a culture of payment, disconnect the supply of electricity and water in appropriate circumstances, and take appropriate steps for the collection of amounts due.

The owner's ability to protect her own interest by ensuring that consumption charges are kept within reasonable limits depends to some extent on the nature of the relationship between her and the occupier.

“If that occupier is on the property with the knowledge and consent of the owner, the latter can, amongst other things, choose the occupier carefully and stipulate that proof of payment in relation to consumption charges be submitted monthly on pain of some sanction including ejectionment.”

### **Can a term or condition relating to service charges in a lease be changed?**

A lease cannot be changed while it is in use, unless the landlord / landlady and tenant mutually agree to any change:

The tenant cannot, for example, refuse to pay water charges when the rental agreement was that the tenant will pay a monthly rental of R500.00 plus additional charges of R50.00 for water consumption.

Similarly, the landlord / lady cannot force the tenant to pay additional charges for water if the rental agreement was that water charges were included in the monthly rental of R500.00.

The landlord cannot in this instance, introduce a separate water meter for the individual account of the tenant without the tenant's consent.

### **Can an owner or landlord / lady install a separate water meter after a tenant has taken occupation?**

This will depend on the terms and conditions of the lease contract. The installation may be possible under the following circumstances: -

- parties agreed that the rental excludes charges for water consumption;
- the tenant upon receiving a bill, is required to pay the full amount due;
- the tenant was aware and agreed that the landlord / landlady would install a separate water meter.

Should the agreement about rental be inclusive of water charges, the tenant could object to the installation if this means a change to the lease contract.

The following may be grounds for objection:-

- the tenant would have to pay charges for water consumption, over and above the rental;
- if the tenant paid a proportionate share, the installation of a separate water meter would seriously alter the amount.

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