

Daily News Tuesday March 31 2009

Self-help a costly exercise

Legal action for recovery of rent also prohibitively expensive

Dr Sayed Iqbal Mohamed

IT IS ALWAYS difficult to resolve a dispute between a non-paying tenant and a frustrated landlord or landlady that may ultimately lead to the tenant being illegally locked out of the dwelling.

The tenant, who is unable to pay rental because of a change in financial circumstances, usually does not give the landlord/lady priority. There are landlords who do make allowance for changes that are beyond the control of their tenants, but can do so only up to a point.

Sometimes, a landlord decides to shut off the supply of electricity and water to the tenant's dwelling, hoping to get the tenant to settle the rental arrears or to vacate the dwelling. If this fails to deliver the desired result, the landlord may prevent the tenants and his or her family entry to the dwelling.

The tenant's goods are either locked in the dwelling or stored in another location. The goods may be all the landlord has as "security" in lieu of the outstanding rentals, or perceives it as a means of a final inducement for the tenant to pay.

The self-help remedy a landlord resorts to sometimes succeeds in securing and eventually recovering the arrears. The landlord, having recovered the rentals, may allow the tenant to continue to occupy without compensation for the deprivation the tenant suffered due to the illegal disconnection of services or the lockout.

The tenant enters into a lease for the full use and enjoyment of the dwelling in return for the rental amount that is agreed on and the payment date. The rental is due in full, on time and must be paid regularly in terms of section 4(5) of the Rental Housing Act, 50 of 1999 as amended (the RHA). The provisions of the RHA also protect the tenant from unlawful action by the landlord, such as the self-help remedy mentioned above.

How then does a landlord/lady, who has the right to full and regular payment of the rental, deal with arrears?

In the absence of any unfair practice, the landlord can cancel the lease if the tenant fails to remedy the breach. Or he may apply to court to attach the property of the defaulting tenant, or do both. The landlord can lodge a complaint with the Rental Housing Tribunal for the unpaid rentals, since this is an unfair practice.

Self-help can be a costly exercise for the landlord, because two wrong actions do not amount to a viable solution. The preamble to the RHA states that no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.

Legally, the tenant can bring an action, either through the Tribunal or the courts, to have the electricity and water supply reconnected and to be reinstated to the dwelling.

The landlord may end up paying at the very least, the legal costs for the urgent application (spoliation).