

# Self-help remedies illegal

**Our law enforces the rule that two wrongs don't make a right**

---

THE LAW generally does not allow self-help remedies like dispossessing tenants of occupation through illegal lockouts, preventing access and disconnection of services such as the unrestricted and uninterrupted supply of electricity and water.

An unlawful lockout by a landlord / landlady, who has the legal right to possession of the dwelling, does not translate into proper legal relief. The law provides solution against a non-paying tenant or a tenant who refuses to vacate after a proper cancellation or termination of a lease.

The general rule is that no one is entitled to take the law into her or his own hands.

The unlawful action must be corrected first, before the landlord / lady can seek legal remedy to his or her legal right to regain possession.

## What is spoliation?

It is a form of interdict that was used in Roman law that protected the person's right of peaceful possession by stopping the interference or disturbance. The right to ownership or the right to possess was not

decided through the interdict, irrespective if such a right related to the victim (spoliatus or spoliatee, the person who was despoiled through dispossession) or the perpetrator (spoliator; the person responsible for the illegal act or threatened to do so).

The law was concerned with protecting a person from an illegal action and whatever good reasons or lawful claims the spoliator had, was dealt with through a separate legal action. This aspect of the common law is still used in South Africa. It is a speedy remedy to grant an urgent relief to a party who has been dispossessed illegally, or when services are disconnected illegally.

Illegal action to deprive possession or the continued supply of services is a quick-fix or self-help remedy that is not allowed in our law.

The following are examples of unlawful actions that will lead to possible spoliation application: -

- The landlord / lady instructing the municipality to disconnect services because the tenant's lease is cancelled (*Painter v Strauss* 1951 (3) 307 (O); *Naidoo v Moodley* 1982 (4) SA 82 (T)).
- Preventing access to the dwelling, for example, by locking the door (*Stocks Housing (Cape) (Pty) Ltd v Chief Executive Director, Dept of Education & Culture Services*, 1996 (4) SA 231 (C)).
- Destroying part of the dwelling (*Rikhotso* case).

### **Counter-spoliation: exception to the general rule**

While the general rule is that a person cannot take the law into her own hands, there are certain situations when this is allowed. A tenant or a person despoiled can resort to self-help or an unlawful action to counter the landlord's unlawful action where it is not possible to obtain relief urgently from the court. This must be done to prevent immediate harm to one's property or to oneself (*Shamahomed v Hendricks* 1920 AD 151).

A tenant can restore the supply of electricity or water supply or remove the padlock provided this is done instantly or immediately. If the tenant was locked out unlawfully, that is, without an order of court, the tenant can regain entry and take possession of the dwelling.

However, if the tenant finds that the dwelling is already re-occupied by the landlord or another tenant, then counter-spoliation is not permissible. The tenant would have to apply for spoliation or bring another application, depending on the circumstances of the situation.

Spoliation and counter-spoliation were brought before the court in *Abbott v Von Theleman* 1997 (2) SA 848 (C) that related to a dispute between two owners that used a common gate that led to their respective properties. Owner A installed a lock and chain to the gate that provided right of access to another owner B, having informed him of the intended action and thereafter giving him a key.

When B cut the chain and removed the lock, A brought a spoliation application and was

granted a final order preventing B from cutting the chain or removing the lock. B's action was not counter-spoliation. The right of access was not denied B even though the locking of the gate posed an inconvenience.

In a situation where the landlord does not want to enter into a lease and has made his intention clear, a person who takes occupation of the property, cannot rely on spoliation if he is locked out (*De Beer v Firs Investments Ltd* 1980 (4) SA 503).

The lease came to an end and the tenant vacated the property at the Firs Shopping Centre in Rosebank. The tenant Bendemann handed the keys to a third party De Beer who was not accepted as a new tenant.

De Beer then proceeded to take occupation on May 19 but the following morning found the locks changed thereby preventing him access to the shop.

The court held that the owner Firs Investments Ltd had the right to take possession by force against De Beer who was a trespasser. The action of the owner was a counter spoliation since De Beer installed his own locks which were subsequently removed and replaced with new ones by the owner, consisting of what the court referred to as one transaction. According to Coetzee J, the owner was entitled to take physical possession of the shop, "to occupy it and to physically prevent any other person from taking occupation of its property.

"A trespasser, such as the applicant undoubtedly was, cannot be in a better position than a spoliator."