



# RENTAL CLAIMS AND EVICTION

## 1. THE RENTAL HOUSING ACT NO. 50 OF 1999

- Repeals the Rent Control Act
- Amends and confirms the common law regarding leases of residential property used for dwelling purposes.

### CERTAIN PERSONAL RIGHTS OF LANDLORDS AND TENANTS ARE PROTECTED:-

#### Tenant

- Advertising
- Privacy
- Not searched
- Possession seized
- Communications
- Includes members of households

#### Landlord

- Prompt payment
- Recover rent
- Terminate lease
- Damages and goods repaired on termination

#### In terms of the Act:

- The tenant may demand that the lease be put in writing.
- Receipts to be issued.
- Investment of deposit in an interest bearing account for the benefit of the tenant.
- Inspection prior to and on termination of the lease failing which results in forfeiture of a damages claim.
- List of defects must be signed and attached to the lease as well as a copy of the house rules. (if applicable)
- Within 3 (three) days of expiry the premises should be inspected.

- The landlord must apply the deposit and interest and pay the balance within 14 (fourteen) days of restoration of the property and furnish receipts in respect of damages claimed.
- If no amount is owing to the landlord the landlord must refund it in 7 (seven) days of expiry of the lease.
- The failure by the landlord to inspect the premises on termination: deemed that dwelling was left in good and proper state and a refund of the full deposit and interest is required.
- If the tenant fails to react, the landlord may inspect within 7 (seven) days from expiry.
- Insert the compulsory clauses in leases in terms of the Rental Housing Act
- What were regarded as important clauses in Lease Agreements which protected the Landlord, will have to be reconsidered when the Consumer Protection Act becomes effective. (If applicable)

#### HOUSING TRIBUNALS

- Housing tribunals were established in each province by MEC for housing
- These tribunals must deal with complaints by landlords and tenants in respect of unfair practice.
- Housing tribunal may only determine a dispute relating to an unfair practice if proceedings have not commenced in a Court of law.
- Curtails the landlord's rights of eviction. If a complaint is pending in the Housing Tribunal, Court proceedings are suspended until completed or after a period of three months.

#### Actions against foreign states:

- Clients often enter into leases with foreign states and require either eviction proceedings or rental claims.
- These states have immunity from enforcement

of contracts in terms of the Foreign States Immunities Act (not applicable to commercial contracts).

- Rental claims in respect of leases of residential properties for use by foreign states cannot be enforced unless the foreign state gives prior written consent.

#### **Important clauses in a lease**

- Waiver of immunity signed by the person at the consulate who is authorised
- Written consent from the foreign state in terms of Section 14(2) of the Act which should be a consent specifically relating to the enforcement of the lease
- The foreign state subjects itself to the laws of the Republic of SA.

## **2. RENTAL CLAIMS – LANDLORD’S HYPOTHEC**

(SECTION 32 OF THE MAGISTRATE’S COURT ACT)

- Application without notice
- An affidavit may be made on behalf of the landlord and applies to all types of land.
- The affidavit must state that the rent is due
- A (7) day demand for payment
- The tenant intends to remove goods in order to escape the payment of rent. There must be an element of urgency.
- The landlord’s hypothec is lost once the goods have been removed to another location.
- Goods may also be seized whilst in the process of

removal or transit.

- A landlord may not remove goods without an order of court.
- Goods which may be attached is the property of the tenant, the sub-tenant and a third party.

#### **Goods specifically exempted: -**

- Movable property on leased premises that are hypothecated under a notarial bond in terms of the Security of Movable Property Act No. 57 of 1993
- Instalment sale agreement as defined in the National Credit Act.

## **3. EVICTION AND THE COMMON LAW**

- Mainly applies in
  - the Law of Tenancy
  - Sales in Execution
  - Sales of Immovable Property and
  - occupation of land by squatters
- Eviction regulated by:
  - The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act No. 19 of 1998 (PIE).
  - The Constitution which has impacted on the common law.
- Evictions by persons other than the owner
  - Persons having a possessory right, or joint lessee’s spouse.
  - A lessee or lessor.
  - Trustee, Curator or Executor.
- Occupier’s common defences to eviction
  - A better right than the owner
  - Has been dispossessed of occupation
  - A lease
  - Huur gaat voor koop
  - A loan for use
  - A lien
  - Prescription

## THE EFFECT OF THE CONSTITUTION

### Section 26(3)

- No-one may be evicted from their home or have their home demolished without an order of Court.

## THE IMPACT OF THE CONSTITUTION ON RESIDENTIAL EVICTIONS

- All evictions from residential properties now have to be dealt with in terms of PIE which has stringent procedural requirements.

## 4. THE PREVENTION OF ILLEGAL EVICTION FROM AND UNLAWFUL OCCUPATION OF LAND ACT NO. 19 OF 1998

(HEREINAFTER REFERRED TO AS "PIE")

- PIE is the Act by which all unlawful occupiers and/or tenants are evicted.

### The Land

- PIE applies in respect of all land throughout the Republic of South Africa and includes any building or structure on the land. The definition of a building or structure includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter.
  - PIE does not apply to:
    - Commercial property
    - Commercial leases.
    - Structures that do not form the function of a dwelling - however once occupied as a residence, the Act becomes applicable.
    - Juristic persons as lessees (except if the land is used as a dwelling)
    - Holiday Houses

### Who is an unlawful occupier? (Section 1)

"A person who occupies land without the express or tacit consent of the owner or person in charge, **or** without any other right in law to occupy such land"

- Persons who can fall under the definition of unlawful occupiers are:
  - Tenants
  - Defaulting mortgagors
  - Spouses
  - Land invaders or squatters
  - Other lawful occupiers.

### JURISDICTION

- In terms of PIE the Land Claims Court has no jurisdiction.
- The High Court or the Magistrate's Court in whose jurisdiction the land in question is situated.
- All appeals from the Magistrate's Court under PIE as well as review proceedings lie with the High Court.

### PROCEDURE – ACTION OR MOTION

- "Proceedings" in section 4(1) of PIE includes proceedings by way of application thus one does not have to issue summons.
- Applications in terms of PIE cannot however be brought *ex parte* which means notice has to be served on the person concerned.

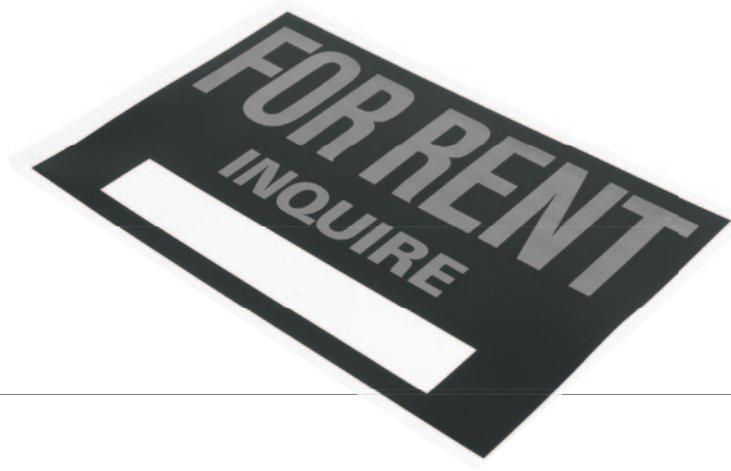
### NOTICE OF PROCEEDINGS (SECTION 4(2))

- At least (fourteen) days before the hearing of the proceedings, the Court must serve written and effective notice of the proceedings on the unlawful occupier and the municipality having jurisdiction.
- Ordinary days, not business days

### The requirements of Section 4(2) - Notice

- Notice of proceedings must state that the proceedings are being instituted in terms of Section 4(1) for an order of eviction of the unlawful occupier.
- Must indicate on what date and at what time the court will hear the proceedings.
- Must set out the grounds for the proposed eviction.





- State that the unlawful occupier is entitled to appear before the Court to defend the case and has the right to apply for legal aid.
- Clearly advise whether the application is brought by the applicant as owner of the property or otherwise.

#### **Procedural requirements in the Magistrate's Court:**

- Urgent application under PIE (Section 5 only) in the following circumstances:
  - real and imminent danger of substantial injury or damage to any person or property, if the unlawful occupier is not forthwith evicted from the land;
  - likely hardship to the owner or affected person if order for eviction is not granted exceeds the likely hardship to the unlawful occupier against whom the order is sought;
  - There are no other effective remedies available.
- Section 5 of PIE does not make provision for occupiers to be reinstated if the eviction order is not confirmed on the return date.

#### **Granting of the Order: Relevant circumstances (Sections 4(6) and 4(7))**

- The Act distinguishes between occupation for less and more than (six) months, which period run from the date when the occupation became unlawful.
- Less than 6 (six) months:
  - the rights and needs of elderly, children and disabled persons and households headed by women.

- More than 6 (six) months:
  - the rights and needs of elderly, children and disabled persons and households headed by women.
  - the age, gender and relationship of the unlawful occupiers;
  - their financial position, source of income and income and expense statements;
  - full particulars of their assets and liabilities;
  - their health situation and disabilities pertaining to their ability to relocate;
  - availability of alternative accommodation;
  - the date on which they unlawfully occupied the property in question and all the surrounding facts regarding the manner and the period of occupation;
  - any other facts.

#### **DETERMINATION OF THE DATE OF EVICTION**

- If the Court is satisfied that all the requirements of Section 4 have been complied with.
- No valid defence has been raised by the unlawful occupier it must grant an order of eviction.
- Court must determine a just and equitable date on which the unlawful occupier must vacate the land and date which the order may be carried out if the land is not vacated by the said date.

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