



### **Eviction proceedings – Where does the Landlord stand?**

It's one of the most frustrating situations that any property owner may experience – I let out my premises with the expectation of a steady inflow of rental income, but my tenant turns out to be less than satisfactory in meeting my expectations in this regard. It would seem only appropriate that a non-paying tenant should be easily evicted from my premises.

As many property owners in this scenario soon realise, the process of evicting a tenant is anything but easy, or fast.

*The Prevention of Illegal Eviction from Unlawful Occupation of Land Act* came into operation in June 1998. This piece of legislation was promulgated through the lens of the Constitution of South Africa, bringing with it a vast list of sovereign human rights which our courts have ever since been bound to uphold and enforce.

Section 25 of the Constitution lists the right to property, and more specifically, the right not to be unlawfully possessed of such property, as one of such sovereign rights. *The Prevention of Illegal Eviction Act* subsequently followed in order to give effect to the constitutionally ordained right to property.

This, topped with the *Consumer Protection Act*, is the main cause for the lengthy delay in instituting and finalising eviction proceedings.

In the event that you have concluded a lease agreement with your tenant (which is always advisable for various reasons) and you wish to evict a tenant before the expiration of the lease period, Section 14 of the *Consumer Protection Act* comes into play. You will have to provide the tenant with a 20-business-day notice period in which to rectify his breach of the lease agreement, such as defaulting on rental payments or contravening body corporate rules. It is only after he has failed to rectify his breach that you will be entitled to cancel the lease agreement and thereafter proceed with an eviction application. Therefore, if he pays the outstanding amount or rectifies any other behaviour which renders him in breach of his contractual obligations within those 20 days, he is no longer in breach and you will not be entitled to proceed in cancelling the contract, nor will you be entitled to evict him.

Only once satisfactory cancellation has been completed will a magistrate or judge grant leave to serve a formal eviction application on a tenant.

However, the frustration for property owners does not end here. In terms of the *Prevention of Illegal Eviction Act*, a court is obliged to make an order for the eviction of an illegal occupant for a just and equitable date. This can be anything from one month to one year.

The legislation stipulates that the court must take into consideration certain factors when deciding on a just and equitable date for an eviction, such as the existence of alternative accommodation in the area, the rights and needs of the elderly, children, disabled people and households headed by women.

Therefore, the right of a property owner to timeously evict a non-paying occupant from his or her property does not override the rights of such occupant. The court is burdened with performing a balancing act in this regard, considering the prejudice to be suffered by the illegal occupant, and the prejudice, usually economic in nature, to be suffered by the property owner.

However, it should be emphasised that a court will not make a ruling that an occupant with no legal basis to reside at a property shall have the right to stay there in perpetuity. This may be evidenced by the wording of the act in Section 4 (8) thereof, which states that a court *must* grant an order for the eviction of an unlawful occupier. The court will always make an order for the eviction of such a person, it is just a matter of determining what the effective date of such an order shall be.

It is therefore of utmost importance to put forward the strongest possible argument for why the prejudice to be suffered by a property owner shall outweigh the prejudice to be suffered by an occupant devoid of any legal right to reside at your rental property.

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