

What rights do you have if the landlord sells?

What happens if property is sold while occupied by a tenant? Does the tenant have any rights and are they within their rights to breach the lease agreement in this instance?

According to Adrian Goslett, CEO of RE/MAX of Southern Africa, the law states that a landlord is within their rights to sell their property to a third party, even if the property is let out to a tenant and a lease agreement is in place.

However, in terms of the legal principle *huur gaan voort koop*, the lease precedes the sale and therefore the tenant is entitled to retain occupation of the property for the remainder of the lease period.

"Although a tenant has the right to stay in the property for the remainder of the lease period, there could be some anxiety around the situation, especially if it means dealing with another landlord or the renewal of terms with the new owner of the property," says Goslett.

"A lot is also dependent on the new owner's plans for the property. They maybe intent on keeping it as a rental property, or there is the option of them wanting to move into the property themselves, which means they will not be willing to renew the lease agreement once the term has expired."

In certain cases, the tenant may feel they would be more comfortable with finding alternative means of accommodation as soon as they can.

However, if there is still quite a bit of time left on the lease they could run into a few complications. "If the tenant decides that they want to cancel their lease and move out, their right to do so will largely be determined by the lease agreement that they signed and current legislation. Tenants will have to read through the lease agreement to familiarise themselves with their rights and obligations should the property be sold. In some cases landlords and tenants may have agreed to a lease with a sales provision in order to give both parties flexibility should the situation arise," says Goslett.

He adds that in some instances the contract may stipulate that the tenant is within their rights to cancel the lease agreement and find other accommodation should the property be placed on the market. "Provided the agreement makes provision within the terms and there is a mutual agreement between the two parties, the tenant can be absolved of any penalties that could arise from the contract being broken," says Goslett.

He notes that if the issue of the property being sold has not specifically been addressed in the lease agreement, it will be a lot more difficult for the tenant to break the agreement without suffering the consequences of a penalty.

"It is important for tenants to remember that the lease agreement will not automatically fall away once the new owner of the property takes transfer of ownership. If it has not been cancelled, all terms and conditions of the lease agreement will be carried over to the new owners of the property. The lease will remain in full effect under the new landlord and both parties will be legally obligated to uphold the stipulated terms of the agreement," says Goslett. "If the new owner has bought the property as a rental property, they will be more likely to want to the tenant to remain in the property and will be less agreeable to releasing them from the contract."

In terms of the Consumer Protection Act (CPA), there is no allowance for the early termination of a fixed term contract within the fixed term, on the condition that the new owner is a supplier who lets property in the ordinary course of his business. This is regulated by section 14 of the Act. The tenant will be entitled to give a 20 business day notice period during the term of the lease if the new owner lets property in their ordinary course of business. However, in this case, the tenant would be liable for the notice month and possibly a reasonable penalty fee. The CPA will not apply in the instance where both parties in the lease agreement are juristic persons.

If a tenant is thinking about cancelling their lease before it has expired at any stage during the process, they should first discuss it with their landlord. "Talking the matter through and being on the same page will help to avoid complications and alleviate some concern as very little may need to change after the property has been sold," Goslett concludes.