

Water restrictions weigh heavily on landlords

When it comes to water restrictions, who is responsible for what is the cause of mass confusion in the rental market. "If a signed lease stipulates that a tenant has the enjoyment of an irrigation system and the landlord provides garden maintenance, then it is the landlord's responsibility to make alternate arrangements as water restrictions are in place."

"As acts of God such as a drought cannot be predicted, a wise solution is to get expert opinion on how to handle the lease agreement in light of these restrictions," says Natalie Muller, Regional Head of Rentals at Jawitz Properties Western Cape.

A tenant might be expected to water the garden with a bucket or watering can only, as per the restrictions. This may not be convenient, particularly if they were expecting to have an irrigation system.

Peter Mennen, Client Legal Liaison at TPN Credit Bureau sheds some light on the legalities in such a scenario: "Should it be objectively impossible for the landlord to provide the service, or at least meet the obligation as per the lease agreement due to the restriction, he cannot be forced to comply with the lease and break the law in the process. This is called supervening impossibility of performance and the specific clause in the contract dealing with this would fall away. He may, however, still be held to account for maintenance of the garden, even though it is impossible to provide the irrigation or watering service."

You can renegotiate the terms of the lease agreement, in writing, to indicate that the garden is not the landlord's responsibility or that some of the plants must be tended to, or that it is expected that the lawn may perish, etc. "As landscaping is a costly business, it is very important to have this discussion and mutually agree on the way forward," Muller adds. "The addendum on the other hand, could state that the tenant not be held liable for the watering of the lawn."

The restrictions stipulate that a pool that does not have a cover may not be filled. A pool cover is made bespoke and is costly but it will fall on the landlord to provide one if the lease says the tenant has access to a pool. "Landlords could even make arrangements with the tenant not to put the rent up for a certain period in exchange for the tenant buying the pool cover. There are various solutions that can work, but it must be stipulated in writing. Importantly, a landlord cannot deny a tenant a pool cover if access to a pool is part of the rental agreement," Muller says.

It is also important to note that pools that are left to dry up are likely to cause even more problems. "Tenants who are supposed to have access to a pool that now requires a cover, do have recourse against the landlord if nothing is done to provide one," says Mennen.

Filling up a pool can be near impossible as similar to watering a garden or washing a car, no hose pipes are allowed; only a bucket or watering can may be used. Further, if there is any rain, no watering of any kind is permitted within 24 hours.

For those lucky enough to have a well point or borehole, the current water restrictions are far less challenging to circumvent. "But it must be registered with the municipality and a sign stating you have such a water supply must be made visible on the front of your property," Mennen concludes.

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