

Tenants' right of first refusal to buy

Many tenants ask their landlords for first refusal, should the landlord ever decide to sell the property.

"For a happy tenant the right of first refusal is a fantastic opportunity to not only remain in the property they love, but to purchase it for themselves should the opportunity arise", says Bruce Swain of the Leapfrog Property Group.

The right of first refusal means that a landlord agrees to alert the tenant when they've decided to put the property up for sale, offering the tenant the first opportunity to make an offer to purchase.

As with all legal agreements there are complexities which, if not understood can lead to costly litigation - as has been highlighted by the recent court case between *Mokone v Tassos Properties* that ended up at the Constitutional Court.

A rental contract renewal didn't traditionally cover all original terms.

In this case Mokone (the tenant) was granted a right of first refusal in the original lease agreement. This agreement was later extended first orally, and then through a written endorsement.

However, the owner later sold the property to a third party without the right of first refusal. This was arguably legal as previous precedent indicates that the renewal of an agreement should only include the essential terms of the agreement, unless the collateral terms (such as right of first refusal) are expressly mentioned.

This case went to the Constitutional Court, which held that "lay person(s), when renewing a lease on the same terms and conditions, would regard the contents of a document setting out the terms of their lease and a related agreement to agree of whatever nature as their 'lease' and therefore a right of first refusal would form part of any renewal".

The sale to the third party was subsequently denied, with the Court could "see no reason why" the tenant could not legitimately step into the position of the third party.

Swain believes that this is an important judgment in that: "Landlords and tenants now need to be aware that a contract renewal will be deemed to renew all aspects of the original agreement (both essential and collateral). Should this not be the intent the parties will need to expressly stipulate this in a separate addendum. This applies to all stipulations in a rental contract including annual increases and the like."

Leapfrog Press Release