

## **Early cancellation of a residential lease**

In ideal rental situations, when a lease is signed the tenant will stay for the full duration of his lease without any complications and the landlord will uphold his obligations, creating a win-win situation for tenant and landlord.

What happens though when the lease is to be cancelled early, whether due to the tenant's circumstances changing or to the landlord wanting his unit vacated?

This can be a tricky situation to deal with, says Sunell Afrika, rentals manager for property company SAProperty.com, as there are obligations to fulfil from both sides, depending on the situation, and the vacating of the premises needs to be handled as amicably as possible.

If there is no cancellation clause in the lease, stipulating conditions where an early cancellation is acceptable and the terms of such, or if either the landlord and tenant are not in agreement with the termination, then either the Consumer Protection Act (CPA) or the Rental Housing Act (RHA) would apply.

A landlord cannot terminate the lease early unless there is a breach in the contract, as stipulated in the RHA, section 4 (5)(c).

If there is a breach in the contract, i.e. either the tenant has not paid his rent on time or if the landlord fails to perform his duties as stipulated in the lease, then the standard "breach of contract" procedure would follow. The guilty party is given a certain amount of time to remedy the breach, failing which the innocent party can then cancel the lease.

If the tenant would like to end his lease early, he may apply the CPA ruling, which says that he may "for any reason whatsoever (which may be entirely unrelated to a breach by the ... landlord) by giving the landlord 20 days written notice of the cancellation". The CPA also does say that the landlord is entitled to a "reasonable cancellation penalty", which is subjective as what is reasonable for one may not be reasonable for another, says Afrika, but guidelines for this are provided for in Regulation 5 of the CPA.

Often landlords or rental agents would assume that it would take a month to find a tenant, which would mean that the penalty would be a month's rent, she said.

If a lease is to be cancelled early, for whatever reason, this must be done in writing giving the other party ample time to react or respond, said Afrika.

SAProperty.com Press Release