

How to handle a defaulting tenant

"Some landlords may find themselves in the situation where their tenant is no longer able to pay their monthly rent; however landlords cannot simply evict the tenant as they are protected by the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, No. 19 of 1998, also known as the PIE Act," says Adrian Goslett of RE/MAX.

"Essentially the act applies to the occupation of premises which constitute a dwelling, which in the case of a landlord and tenant relationship would be the residential property in an urban area. The reason that the act was introduced was to ensure that tenants were protected from being unlawfully evicted from the property. However, it is important to note that while the act aims to prevent wrongful eviction, it does not mean that the tenant cannot be evicted, merely that the correct procedure needs to be adhered to during the process."

Goslett says that it is imperative that any homeowner or investors who wishes to let out a property familiarise themselves with the PIE Act, along with the numerous procedures it advocates for the lawful dealing of a defaulting tenant. "While the act was created with the tenant's protection in mind, it is not prejudice against landlords, but ensures that the eviction process is followed in the correct manner according to legislation and that tenants are treated with respect," he explains.

According to the PIE Act, in order to lawfully evict a tenant, landlords will have to adhere to the following process:

If by failing to pay the agreed rental amount, the tenant has breached the lease agreement, the initial step would be for the landlord to send notice to the tenant informing him of such breach, referring specifically to the breach clause stated in the agreement. "This emphasises the importance of ensuring that all lease agreements with tenants meet legislative requirements and include the necessary clauses providing them with protection. The more detailed the lease agreement, the better for both parties," says Goslett.

He advises that the lease agreement will also need to fall in line with the Consumer Protection Act (CPA) in that, regardless of the time period stipulated by the breach clause, the landlord is required by the CPA to give at least a 20 business day notice to the tenant to allow them to rectify the breach before the agreement is cancelled, provided the tenant does not remedy the breach within the given time frame.

Once the notice period has lapsed without the situation being rectified, the landlord will be faced the decision of proceeding with a summons with an automatic rent interdict or immediate cancellation of the agreement. In certain instances the landlord might be able recover their legal costs for the process, although this is only possible if the lease agreement makes provision for this.

"If after the summons the tenant has still not made any attempt to pay the outstanding rental amount, the landlord is within their rights to cancel the lease agreement. If the agreement is cancelled the tenant will no longer fall under its protection and will be regarded an illegal occupier of the property. In terms of the PIE Act, the landlord will then be able to legally evict the tenant," says Goslett. He notes that provided the lease has been cancelled, the landlord can initiate the summons proceedings for outstanding rent and the eviction proceedings simultaneously.

There are a few aspects the landlords should consider when applying for an illegal occupier to be evicted from their property, such as the fact that the application must be made to either a Magistrate's court or the High Court.

Goslett says that if the application is unopposed; it can take at least eight to ten weeks for the eviction order to be granted. Even if the eviction order is granted on the date of the hearing, it is common practice in South Africa to provide the tenant with at least another 14 days to find other accommodation before the eviction order is executed.

After this period the sheriff will be lawfully entitled to proceed with evicting the tenant. Cost is another important consideration that the landlord will need to take into account. The cost may vary depending on the sheriff's fees and whether the matter is opposed or not.

An unopposed eviction could cost between R12 000 and R20 000 in legal costs plus disbursements, while the cost of an opposed matter will be substantially more.

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