Renting Out Your Property? What Every Landlord Should Know

If you rent out a house, flat, cottage, room or backyard unit, the Rental Housing Act 50 of 1999 applies to you. It applies whether you use a rental agent or not, and whether your lease is written or verbal. Many private landlords break the Act without knowing it, and it can cost them money. Here is what you need to know. This article serves as a brief guide on your rights and obligations as landlord.

1. **The lease**

- A verbal lease is valid, but if your tenant asks for a written lease, you must give one. Our advice: always put it in writing.
- A written lease must at least set out:
    - the names and addresses of the landlord and the tenant;
    - a description of the property;
    - the rent, and any reasonable escalation;
    - how often rent must be paid;
    - the amount of the deposit;
    - the lease period (or, if there is none, the notice period to end the lease);
    - the obligations of the landlord and the tenant; and
    - any other charges payable on top of the rent (for example water or electricity).

2. **Receipts**

You must give the tenant a written receipt for every payment. It must be dated, show the property address, and state what the payment was for (rent, deposit, water, etc.).

3. **The deposit**

- You may ask for a deposit before the tenant moves in.
- You must invest the deposit in an interest-bearing account with a financial institution, at a rate of at least that institution’s savings account rate.
- The interest belongs to the tenant. The tenant may ask you at any time during the lease for written proof of the interest earned.

4. **Two joint inspections**

- **Before the tenant moves in:** inspect the property together with the tenant and record all existing defects. Both of you should sign the list. Dated photos will help in the event of a dispute between the parties.
- **At the end of the lease:** inspect the property together with the tenant within three days before the lease ends.
- Important: if you fail to do the final inspection with the tenant, the law treats this as your acceptance that the property is in good order. You then lose your right to deduct anything for damage and must refund the full deposit plus interest within 14 days after the lease ends.

5. **Refunding the deposit**

If the tenant did not cause any damage to the property, you must refund the full deposit plus interest within 7 days after the lease ends.

If the tenant indeed caused damage to the property which was properly recorded during the exit inspection, you may deduct the reasonable repair or replacement costs from the deposit. The balance of the deposit (if any) must then be refunded to the tenant within 14 days.

6. **Your tenant's rights**

- **Privacy**: you may inspect the property during the lease period, but only at a reasonable time and after reasonable notice were given to the tenant.
- **No discrimination:** you may not refuse or treat a tenant differently on grounds such as race, gender, pregnancy, marital status, age, disability, religion or culture.
- **No self-help:** you may not lock the tenant out, change the locks, remove their belongings, or cut the water or electricity to force them to pay or leave. Doing so is unlawful. The tenant can get an urgent court order against you to restore the position and can complain to the Rental Housing Tribunal.

7. **Your rights as landlord**

- To receive the rent on time and in full.
- To recover unpaid rent through the Rental Housing Tribunal or a court.
- To end the lease in accordance with the lease and the law.

- To claim for damage caused by the tenant.
- To get your property back when the lease ends, but only through a court order. If a tenant refuses to leave, you must apply for an eviction order in either the Magistrates Court or the High Court under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE). The Rental Housing Tribunal does not have the power to grant eviction orders.

8. **Your tenant's obligations**

The tenant must pay the rent and any deposit on time, attend the inspections, look after the property, use it only for the agreed purpose, and return it and the keys in the same condition (fair wear and tear excepted) when the lease ends.

9. **The Rental Housing Tribunal**

Where a provincial Rental Housing Tribunal has been established, landlords and tenants can refer disputes to it free of charge — for example about deposits, unpaid rent, maintenance or lockouts. Its rulings are enforceable like an order of the magistrate's court.

10. **What's coming in future?**

The Rental Housing Amendment Act 35 of 2014 was signed in 2014 but has not yet come into force. Once it does, written leases will become compulsory for all residential leases and landlords will face stricter duties and penalties. Landlords who already comply with the points above will be well prepared.

Est-Marie McCallaghan

Van Velden – Duffey Inc