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# Landlord and tenant – A rocky relationship?



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By **VUYOKAZI MPELA**

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## Understand the laws that govern and protect both landlord and tenant

Many of us live in rented accommodation and some of us are landlords, renting out our residential property for additional income. In either case, you must be familiar

with the relevant laws.

In this member guide, we examine the fundamental laws of landlord and tenant and look at several significant aspects of the relationship.

## **Which laws govern the landlord and tenant relationship?**

There are two types of laws that govern this relationship, namely the “Common Law” and “Acts of Parliament” (or legislation).

### **Common law**

This is the unwritten law developed over time by the courts and customary usage. These laws came before written laws.

### **Legislation**

These are Acts of Parliament passed by the government to regulate the relationship between landlord and tenant. A law enacted by Parliament will override the common law if there is a conflict. The following Acts govern the relationship between landlord and tenant:

[Rental Housing Act](#) (the RHA): This Act governs the law of landlord and tenant in respect of residential property. Parties must ensure that they comply with the terms of the RHA. If they fail to do so, they can be fined, imprisoned or liable for damages.

[Consumer Protection Act](#) (the CPA): This Act protects the rights of consumers in general, including tenants of residential property.

[Prevention of Illegal Eviction from and Unlawful Occupation of Property Act](#) (the PIE Act): This Act is applicable when a landlord wishes to evict a tenant.

### **The lease agreement**

Although Acts of Parliament and the Common Law govern the law of landlord and tenant, most parties will choose to sign a written agreement of lease. They do so to clarify the specific terms of their contract. A landlord and tenant are bound by their lease agreement unless it goes against the statutes referred to above.

A well-drafted lease agreement, setting out the rights and obligations of the parties, will prevent disputes and help maintain a cordial relationship between the parties. Legal&Tax will provide you with a comprehensive pro forma agreement of lease. Please request this from your advisor.

## Some important matters to note

Having reviewed the basic laws which govern landlord and tenant, we focus attention on several aspects of the relationship, which are particularly noteworthy:

### Screen all tenants

As a landlord, make sure you screen all potential tenants. Otherwise, you may end up with a tenant who does not pay rent or refuses to leave the premises. There are a few resources to assist in screening a tenant. You should:

- Obtain a “Tenant Profile Report” from TPN Credit Bureau. This report gives you access to the potential tenant’s rental history. If the prospective tenant has been a bad payer in the past, he is unlikely to be the tenant you are looking for!
  - Contact details for TPN are:
    - Website: [www.tpn.co.za](http://www.tpn.co.za)
    - Tel: 0861 876 000
- Obtain your tenant’s credit history from a [Credit Bureau](#) such as TransUnion. The report, which is not expensive, contains a person’s payment history, bad debts, judgements and the like. If a person has a poor credit record, you can be quite sure he will not pay his rent consistently.
  - Contact details for TransUnion are:
    - Website: [www.transunion.co.za](http://www.transunion.co.za)
    - Tel: 0861 482 482

### Inspect the premises

The RHA stipulates that a landlord and tenant must inspect the premises before the lease commences (incoming inspection) and after it ends (outgoing inspection). The parties must attend both inspections. The purpose of the incoming inspection is to check the condition of the premises at the outset. If there are aspects requiring repair, the parties must agree on who will carry out the repairs and pay for them.

The purpose of the outgoing inspection is to compare the condition of the property from the beginning of the lease to the termination of the lease. The parties will then be able to determine if there has been any damage to the premises.

The parties must write down and sign a record of both inspections.

If the tenant fails to attend the incoming inspection, he loses his right to challenge the deduction of repair costs from his deposit when the lease ends.

### Get a deposit

As a landlord, make sure you get a rental deposit from your tenant at the beginning of the lease. The deposit will protect you from loss should the tenant cause damage to

the premises or fail to pay the rent. A tenant who refuses to give you a deposit is probably not financially secure and may not be the tenant you want!

The RHA states that the deposit must be paid into an interest-bearing account. The landlord may not make deductions from the deposit to cover normal wear and tear. A landlord can only deduct from the deposit for damages caused by the tenant either negligently or intentionally.

During the outgoing inspection, the landlord determines if there is any damage that the tenant must pay. After deducting these costs, the landlord must refund the balance of the deposit (if any) plus interest to the tenant within 14 days of the end of the lease.

If there are no damages for which the tenant is liable, the landlord must refund the deposit within seven days of the end of the lease.

## **Expiry and cancellation**

Parties usually agree to a fixed lease period, such as 6 or 12 months. After this period, unless the parties agree to renew the lease, it comes to an end.

During the lease, the tenant or landlord may claim the other party has breached the lease and seek to cancel the lease. However, the party allegedly in breach must be allowed to remedy the breach within several days (usually 14).

The RHA states that if a tenant remains in the premises after the lease expires, the lease continues on a month to month basis. Either party can cancel this lease by giving one full calendar month's written notice to the other party.

In terms of section 14 of the CPA, a tenant may cancel a fixed-term lease at any time. The tenant may terminate the lease by giving the landlord 20 business days written notice. If both the landlord and the tenant are companies, trusts or close corporations, section 14 does not apply.

## **The Rental Housing Tribunal**

The [Rental Housing Tribunal](#) (RHT) is an independent body established in terms of the RHA. Its function is to resolve disputes between landlords and tenants by way of mediation and arbitration. It is an alternative route to court action, which is expensive and time-consuming.

The RHT can summons a landlord or tenant for mediation or arbitration. A ruling of the RHT has the same effect as the judgement of a Magistrate's Court. If a party disregards any regulation of the RHA, he/she may be guilty of an offence and receive a fine or imprisonment or both.

A landlord may approach the RHT to claim arrears in rental, an eviction order or an automatic rent interdict (to allow for the attachment of the tenant's movable property in cases of non-payment).

Ask your advisor for the member guide dealing specifically with the functioning of the RHT.

## Final word

No doubt, the relationship between landlord and tenant can sometimes be a stormy one. Both parties have their own interests in mind, and these often conflict with one another. However, with a well-drafted lease agreement which clearly and unambiguously defines the parties' rights and obligations, the likelihood of conflict can be significantly reduced.

## Additional Resources

- [A Landlord's Guide to Rental Housing](#) (Wits University)
- [Resolving Rental Disputes](#) (Western Cape Government)

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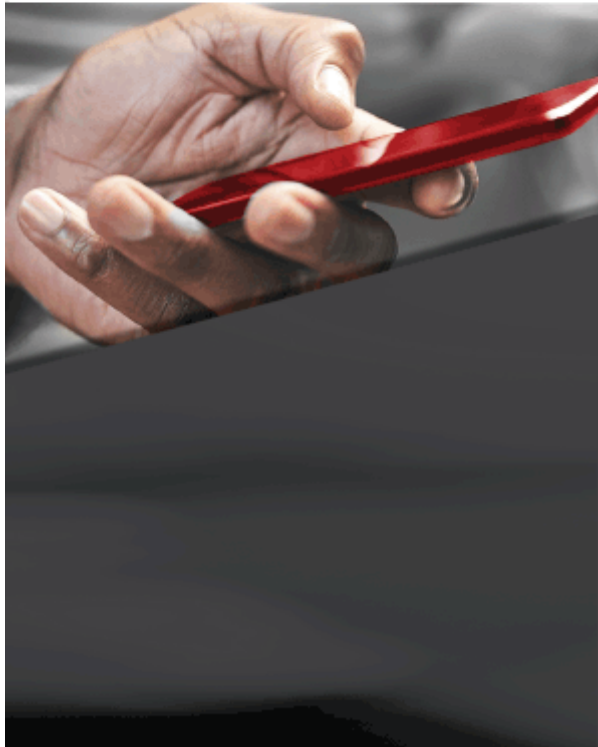
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