

Managing property properly

THE LOW DOWN ON LAWFUL EVICTIONS

By Sechaba Mohapi

Housing is a vital and primary need for each person. As most of us acquire accommodation by lease or through home loans or even through state housing provided by municipalities, it is important to know your rights and what the correct procedure is for lawful evictions.

With the exclusion of farm land, lawful evictions from residential premises, buildings or structures thereon, which includes any hut, shack, tent or similar structure or any other form of temporary or permanent dwelling or shelter, is governed by the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998, commonly known as the PIE Act.

Who has a right to evict?

The right to evict under the PIE Act is given to a registered owner of premises or to a person in control of the residential premises in question. Persons in control of residential premises include:

- A lawful tenant
- The executor administering the estate which includes the premises
- Any other agent acting on the lawful instructions of the owner

Who can be evicted?

People who can be evicted include the following people who remain in occupation of the premises:

- Defaulting tenants whose lease agreements are terminated
- Defaulting mortgagors whose bonds were cancelled and property sold in execution

- Unlawful occupiers and squatters
- Any other person who does not have the express consent of the owner or person in lawful control of the premises

What are the special considerations?

When dealing with eviction applications our courts are obliged to give special consideration to the elderly, children, people with disabilities and also households headed by women. All facts and circumstances of such persons must be highlighted to the court for the evaluation of such special considerations.

Lawful eviction procedure:

Step 1 - Eviction notice/demand

An eviction notice or demand serves to warn the occupant of the intended eviction and it usually provides the occupant 30 days to vacate the premises. It also affords parties the opportunity to negotiate settlement terms or terms and timeframes for vacating the premises. This letter may be served by the Sheriff of the Court, by hand at the premises or by registered post.

Step 2 - Court application for eviction

A court application by way of a notice of motion with a supporting affidavit, must be served by the Sheriff on the occupant and on the relevant municipality. This will set out the court appearance date and the dates when the occupant must file their opposing court papers if they intend to oppose the eviction application. The occupant must receive the court application papers at least 14 days before the court date.

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Step 3 - Appearance in court for hearing of eviction application

A Court is obliged to consider all relevant facts relating to the eviction application at the appointed date for hearing the application. Legal representatives of the parties will be afforded an opportunity to present oral and written legal arguments on behalf of each respective party. The Court will then through a Court Order, if the application is successful, provide the occupant sufficient time to vacate which is ordinarily up to 1 month with a provision that should the occupant fail to vacate in that period, the Sheriff is authorized to remove the occupant and all belongings from the premises at the costs of the occupant.

Step 4 - Forced eviction of occupant by Sheriff

The Sheriff will first serve a copy of the Eviction Court Order on the occupants. The Sheriff will then usually be authorized to forcefully remove the occupants after the vacation date appointed by the court has lapsed. The Sheriff may also be authorized to obtain the assistance of the police

where necessary and he may also be authorized to remove the belongings of the occupants including to demolish any erected structures. The Sheriff may take up to 3 weeks to execute the eviction Court Order after making necessary arrangements to evict the occupants.

Conclusion

Lawful evictions can take between 2 to 3 months to be concluded and they can become technical and even costly. A landlord, owner or a person in control who wishes to evict, and a tenant or occupant against whom eviction processes are being commenced, are in both instances advised to seek legal advice from an attorney specialising in evictions to ensure that the eviction process is lawful and carried out correctly. Following the correct lawful eviction procedure minimizes frustration, costs and potential further rental losses and avoids the need for conduct like changing locks, disconnecting utilities and even intimidating conduct, which in itself can result in legal action being taken by unlawful occupants against owners or landlords.



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