

Tenants rights and obligations

Tenant Profile Network •



The obligations of tenants as well as landlords are covered in statutory, as well as non-statutory law in South Africa. Read more to get all the info you need about renting or letting property.

There are dozens of obvious and practical reasons why many individuals, families as well as businesses, rent property. For a start, renting provides the tenant with the benefits of fairly fast availability and choice. Although some may argue to the contrary, the flexibility enjoyed by tenants as a result of renting should be appreciated, as well as the relative freedom from unexpected or hidden costs and sudden market crashes. Tenants and landlords should enter into agreements with the intention of giving as well as getting reasonable value. In many cases, the attitude with which one approaches a deal will determine its long-term (or possibly short-term) viability and success.

Rather than the much misunderstood idea that renting property is “enriching somebody else” tenants should consider the benefits of renting and be willing to accept that in most cases, they are receiving a fair bargain. But like just about everything in life, even a bargain must be paid for. Hence the reasons why the obligations of tenants (as well as landlords) are covered in statutory, as well as non-statutory law.

Non-Statutory Law (Common Law)

The tenant is obliged to:

- Pay the proper amount of rent in the proper commodity at the proper place and time
- Take good care of the property and not use it for other purposes than for which it was let
- Restore it to the same condition that he received it at termination of the lease

Common law states simply that the full rent must be paid at the proper time – the time and date agreed by both the tenant and the landlord. It does not provide the tenant with a 7 day grace period.

Statutory Law (The Rental Housing Act)

The tenant is obliged to:

- Make prompt and regular payment of rent and other charges payable in terms of the lease
- Make payment of a deposit – the amount of which should be agreed upfront between the landlord and tenant
- Have a joint incoming and outgoing inspection with the landlord

The lease agreement

A lease can be in verbal written form. Obviously a written lease agreement is recommended as this clearly sets out the rights and obligations of both the tenant and the landlord. However there are many variations of standard clauses and the tenant should ensure he or she reads the lease carefully and understands their responsibilities. Whether the lease is verbal or written both tenant and landlord must agree what the rent and additional charges will be, when payment needs to be made, where the payment needs to be made and what property is being rented.

Deposit

Usually a landlord will request the tenant pays a deposit upfront in case there are damages. The deposit might be equal to 1 or 2 months rent depending on criteria such as the tenant's credit profile or the condition / value of the property.

Tenant Rights

If the landlord is holding the deposit the deposit must be refunded with interest.

The landlord cannot use the deposit to upgrade the property when the tenant vacates.

Obligations

The deposit is held in trust in case there are damages – the tenant may not request the landlord use the deposit as rent at any time during the lease and most especially not in the last month of the agreement.

Deposit Refund

The tenant and landlord must perform a joint incoming and outgoing inspection. The incoming inspection is to record the condition of the property when the tenant took occupation and the outgoing inspection is to determine if any damage was caused by the tenant.

The deposit may be applied to any amounts the tenant owes in terms of the lease: outstanding rent, utilities, lost keys, damage, etc.

Tenant Rights

After the outgoing inspection has been performed and it is determined there are no damages the deposit must be refunded to the tenant within 7 days. However, the deposit may be applied to any amount the tenant owes - including utilities. As the landlord will most likely only receive the final electricity and/or water account a month in arrears, he will only be able to reconcile the tenant's deposit account then.

Should the outgoing inspection determine that the tenant did cause damage; the deposit must be refunded within 14 days of restoration of the property.

Should the tenant not attend the outgoing inspection, the landlord must refund the deposit with 21 days of termination of the lease.

Tenants Obligations

- The tenant must attend both the incoming and outgoing inspection
- The tenant should take care of the property during his tenure and return the property in the same good order as it was given to him.
- The tenant must continue to pay his rent and additional costs and not offset the deposit against his rent.

Rent

The rent is usually made up of a fixed basic rent as well as additional cost such as electricity, gas, water, parking, DSTV, etc.

Tenant Rights

- The tenant has a right to receive a receipt for all monies paid to the landlord
- The tenant has a right to a rental invoice which breaks down the different costs: basic rent, electricity, water etc.
- The landlord may not increase the rent during the fixed term period.

Tenants Obligations

The tenant has an obligation to pay the full amount of rent and all additional charges on the due date and to the landlord's specified account.

Utilities

Utilities are the additional charges which the tenant must pay. These amounts are paid over and above the rent and both the tenant and landlord must agree upfront which additional charge the tenant will pay: electricity, water, sewerage, refuse removal or parking.

Tenant Rights

The tenant has a right to inspect the Landlord's municipal account to ascertain the charges passed onto him.

Tenant's Obligation

Over the past few years Eskom has increased electricity charges significantly and this has resulted in the cost of electricity sky-rocketing. The tenant is expected to use electricity responsibly and must understand his obligation to pay for his usage.

Landlords Right

The landlord is entitled to pass on the increase in his levies or rates and taxes as monthly charges, only if the lease specifically makes provision for this.

Early cancellation of a lease agreement

Usually a lease agreement is for a fixed period, for example 12 months. However the tenant does have the right to cancel the lease prior to the end of the fixed period.

Tenant's Rights

The tenant has the right to cancel a lease early by giving the landlord 20 business days notice. The tenant must also remember he will be liable for a reasonable cancellation penalty.

Tenant's Obligation

The tenant remains responsible for the full payment of rent and utilities on the date they fall due. The tenant may not request the landlord use the deposit for rent during the cancellation period.

Maintenance

It is the landlord's responsibility to place and maintain the property fit for the purpose for which it was let. The tenant is responsible for maintaining the property in the good condition it was given to him – fair wear and tear accepted.

Disputes

Should the tenant have a dispute with his landlord there are remedies available to the tenant. It is advisable to have a written lease but the tenant still has rights if the lease is verbal

Tenants Rights

Lodge a claim at the Rental Housing Tribunal

Tenant's Obligation

Keep the payment of his rent up to date.

Tenant's credit profile

Credit Bureaus collect and maintain information regarding how a person pays all their credit accounts, for example their loan accounts, store cards, cell phones and rent.

Tenant's rights

- A tenant has the right to accurate information being held on their credit profiles with the credit bureaus
- The tenant has the right to request 1 free credit report on themselves per year

- The tenant has the right to dispute any inaccurate information which a credit bureau may hold on their credit profile

Tenant's obligation

The tenant has a responsibility to make full and timeous payment to the landlord to ensure and build a positive credit profile. This will assist him when it becomes time to move rental properties, or open new credit accounts.