

What is a tenant's right when the landlord sells?

Many tenants may find themselves in a situation where the landlord decides to put their rental property on the market.

What rights does the tenant have if this happens? Are they within their right to breach the lease agreement that they have in place with the landlord?

Adrian Goslett of RE/MAX of Southern Africa says that according to South African legislation a landlord is not prohibited from selling the rental property to a third party while the property is occupied by a tenant and there is a leasing agreement in place.

"However," says Goslett, "in terms of the legal principle *huur gaan voort koop*, the lease agreement precedes the sale. As a result the tenant is within their right to retain occupation of the property for the remainder of the agreed upon lease period."

He adds even though the tenant can stay for the remainder of the of the lease agreement, some may feel anxious about possibly dealing with a different landlord or the renewal terms of the lease with the new owner. Another concern is what the new owner intends to do with the property. It is possible that the new owner intends on living in the property themselves, rather than letting it out.

"If the tenant finds themselves in such a situation, they might want to find alternative accommodation as soon as possible. However, the tenant's right to terminate the agreement will largely be determined by the contract that they signed and what the law stipulates.

"The initial step would be for the tenant to read their lease agreement to see where they stand and what obligations they have contractually bound themselves to. In certain cases, there may have been a sales provision made in the agreement for such a situation," says Goslett. "If agreed upon at the signing of the lease, there might be a stipulation giving the tenant to cancel their current contract should the property be placed on the market. If these are the terms and there is mutual consent, the tenant is absolved from any penalties that may arise due to breaching the agreement."

If no such stipulation exists, Goslett advises that all terms and conditions in the lease before the sale of the property will be carried over to the new owner of the property. Essentially what this means is that it is far more difficult to get out of the contract, if nothing has been specifically stated in the lease with regards to the sale of the property. In this case, if the tenant breaches the lease agreement they could face paying a penalty of some kind. "The lease agreement will remain in effect under the new landlord and the tenant will be obligated by law to respect the stipulated terms, as will the new landlord.

"It is possible for a buyer to purchase a rental property with the intention of retaining the tenant. If this is the case they will more than likely not want to release the tenant from their contractual obligations," says Goslett.

In terms of the Consumer Protection Act (CPA), a fixed term contract within the fixed term can be terminated early on the condition that the new owner is a supplier who lets property in the ordinary course of his business. This is regulated by section 14 of the Act. In these kinds of situations a tenant is able to give a 20 business day notice period during the term of the lease. However, they would then be liable for the notice month and possibly a reasonable penalty fee. Goslett says that the CPA will not be applicable if the parties to a lease agreement are both juristic persons.

"Ideally, before the tenant makes any decisions about cancelling their lease agreement, they should first communicate with the landlord. Discussing the matter could help put certain issues to rest and there may be little or no need for concern. There is the possibility that the sale of the property only takes place after the period of the lease agreement has expired, or the new landlord may be better than the current one," Goslett concludes.

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