

RE/MAX
OF SOUTHERN AFRICA

FIRST-TIME LANDLORDS GUIDE



Each Office Independently Owned and Operated

FIRST-TIME LANDLORDS GUIDE

INDEX

- 1** Getting started as a first-time landlord
- 2** Selecting the right tenant
- 3** The pros & cons of student rentals
- 4** Managing the rental property
- 5** Explaining the rental deposit
- 6** Explaining breach of contract
- 7** Resolving disputes with tenants
- 8** Late rental payments & evictions
- 9** Negotiating rental escalations
- 10** Cancelling / ending the lease
- 11** Calculating tax on rental income



GETTING STARTED AS A FIRST-TIME LANDLORD

There are six factors that first-time landlords should consider:

1. Plan for future returns

Purchasing a rental property is not a get-rich-quick scheme. Property investment of any kind should be viewed as a medium to long-term investment. A property will appreciate over the long term and will generate a rental income, however, there might be costs that are not entirely covered by the rent. There is a good chance that the rental property will pay for itself over time or when the market booms or when the bond is paid off. However, in the initial stages there will probably be a cost involved.

2. Crunch the numbers

The monthly bond repayment is only one of a few monthly expenses that need to be considered. Affording a rental property is not just being able to pay the bond. When it comes time to crunch the numbers, landlords need to factor in expenses such as property insurance, rates and taxes, utilities, possible legal costs or collection costs, rental agent's commission (a rental agent can assist with vetting potential tenants, collecting rent and general management of the property) and general property maintenance.

3. Set up emergency funds

Ideally, landlords will also need to have a contingency fund in place to assist with any unforeseen circumstances such as issues that are not covered by the home insurance or for legal costs if the tenant defaults on the rental agreement.



4. Selecting the right tenant is crucial

Each prospective tenant should be put through a vetting process before they can let the property. This process is where the services of a rental agent will really pay off, as they will provide the landlord with the professional vetting of potential tenants. Factors that will need to be considered include: the tenant's previous rental history, reasons why they are moving, their place of employment and their monthly income. Landlords should verify the information given by contacting the references provided by the tenant. (More on this on page 4)

5. Set up detailed contracts

A highly detailed lease agreement that contains all the necessary stipulations upfront will help landlords to avoid any complications or misunderstandings regarding the responsibilities of each party. The more that is covered in the contract, the smoother the rental should run as each party knows exactly what is expected of them. No aspects of the rental agreement should be left open to interpretation, with the document covering aspects such as acceptable tenant behaviour, breakage costs, the preferred method of payment and date that the rental is payable.

Equally important is for the landlord to have a detailed agreement with the management agent should they decide to use one. The landlord will be able to sign a mandate with the rental agent which outlines all terms and conditions of the agreement, such as the commission structure and what is expected from the agent. (more on this on page 7)

6. Create checklists for rental inspections

Make a checklist of all the items that need to be looked at before and after a new tenant moves into the property to ensure that all potential problem areas can be sorted out and that a snag list can be drawn up with the tenant in a comprehensive manner.



SELECTING THE RIGHT TENANT

Selecting a suitable tenant is the key to the success of your rental portfolio. Using a rental agent is often the safest and most efficient way of ensuring that you select the right tenant. Should you prefer to do it alone, below are the steps to ensure you select the right tenant:

Step 1:

The initial step that you should take before advertising the rental property is determining the conditions of the rental agreement, specifically with regards to issues such as pets and whether or not the tenant is a smoker.

Step 2:

Clearly stipulate in your advertisement that each tenant is vetted before any rental agreement is concluded. This will have a significant impact on the number of potential tenants who decide to view the property, which can save time and ensure the most suitable fit.

Step 3:

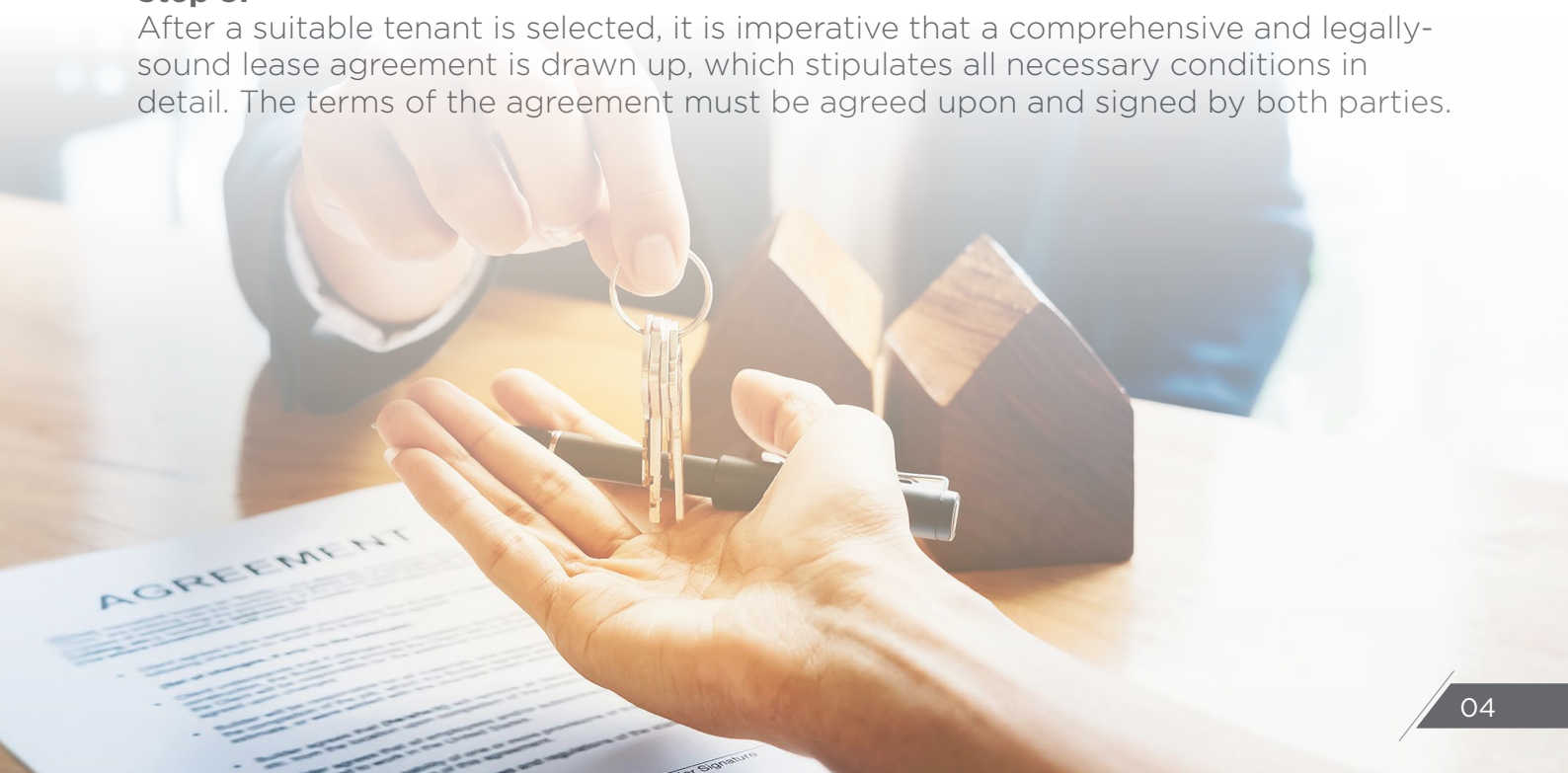
Narrow down the selection further by requesting that each potential tenant fills out a detailed application form when applying. Request information such as their employment details and contactable references. Tenants can also be asked to provide supporting documents which would include a copy of their identity document and a salary slip to verify employment and affordability.

Step 4:

Once the application form with the attached supporting documents have been received, proceed with a credit check and criminal record check on the applicant and contact the references provided by the tenant to verify the application.

Step 5:

After a suitable tenant is selected, it is imperative that a comprehensive and legally-sound lease agreement is drawn up, which stipulates all necessary conditions in detail. The terms of the agreement must be agreed upon and signed by both parties.



THE PROS & CONS OF STUDENT RENTALS

Why student housing is appealing

1. Higher Returns

Student rentals are often rented out per room, which can result in a higher rental return for the landlord. Since students require ease of access to campus as a priority, they are often less demanding with regards to other physical aspects of the property. Students are therefore happy to share common areas such as lounges, kitchens and entertainment areas provided the rent is affordable and the property is within easy access to campus.

2. Fewer vacancies

Seeing as there is generally a high demand for student accommodation compared to the supply provided by tertiary institutions, investing in these kinds of properties is recommendable. This means student accommodation offers low-risk option in terms of vacancies.

Appealing to the student market

To ensure that the property is appealing to their age demographic, Wi-Fi with good streaming capacity is a must. A dishwasher, washing machine and tumble dryer are also valuable drawcards, and a good entertainment area would be an attraction too. Finally, remember to think like a parent. What features would you want to see if you were leaving your child in your property? Security is a must, with either alarm systems or security gates an absolute necessity.



What are the risks?

This type of rental income does pose other risks, such as short-notice lease terminations and the possibility for neglect and damage to the property. However, this can be avoided provided the correct safeguards are put in place to protect the investment value of the property.

1. Lack of maintenance

Given that students might not keep the property as tidy as a family would, wear and tear is probably the biggest risk these rentals carry. You might need to employ a cleaner to ensure that the property is maintained to a reasonable level of cleanliness. Some student accommodation landlords even go so far as to employ a house manager who visits the property regularly and is on hand to assist the students if they have any problems.

2. Damage to property

Damage deposits should also be secured as per any normal rental. Considering that it is typically a parent who will sign the lease and pay for the rental, or act as guarantor for the rental and any other costs, it is advisable to also have house rules agreed to by the students, which are signed before the lease is accepted.

3. Timing the academic year

December and January will normally result in vacancies based on the timing of the student academic year. Where demand is strong and property in short supply, it is not uncommon for landlords to insist that December and January rentals are covered by the students in order to secure them the property.



MANAGING THE RENTAL PROPERTY

The rental agreement is crucial as it outlines the responsibilities of both parties and outlines the procedures for managing the rental property. Again, using a rental agent is often the safest and most efficient way to set up the agreement and manage the property. Should you prefer to do it alone, here are the things you should consider:

Setting up the agreement:

The agreement should include a pre-occupation inspection report, along with details regarding aspects such as the deposit, rental amount, maintenance and upkeep. Time frames should be allocated to the required clauses as well as penalties, should any condition be breached.

Know what your responsibilities are:

Even though a lease agreement has been signed, the property remains the landlord's responsibility. If a utility bill is not paid, the landlord will ultimately be required to settle the outstanding balance. Which is why you should always be aware of what is happening with your property and ensure that all accounts are paid and up-to-date. Certain measures can be taken to minimise the risk posed by a defaulting tenant, such as prepaid electricity and water meters, for example. If this is not an option, a deposit for these accounts can be agreed upon beforehand.

Conduct regular inspections:

While landlords need to be respectful of the tenant's rights and their privacy, it is advisable that home inspections are conducted on a regular basis. The inspections must be at the tenant's convenience, ensuring that any issues or breaches in the contract are dealt with as soon as possible.

What does a managing agent do?

For a percentage of the rental income, an experienced, reputable rental management agent will have the expertise and resources to ensure that the property is managed correctly. They will assist the landlord with tenant selection, reference and credit checks along with the day-to-day management of the property. They will also be up-to-date with the latest legal and regulatory developments to protect landlords and tenants. If necessary, they will also have access to the legal resources and experience to deal with any situation efficiently. If a property rental is handled correctly from the start, with ongoing professional management, many unnecessary and unpleasant situations can be avoided.



EXPLAINING THE RENTAL DEPOSIT

According to Section 5 of the Rental Housing Act, No. 50 of 1999, a landlord is legally entitled to request a deposit from their tenants. The deposit amount will be stipulated in the lease agreement. Conventionally, this amount can be anywhere from one to two or even three months' rent.

Why do landlords ask for a deposit?

The deposit exists largely to protect against defaulting tenants and the lengthy, expensive process involved evicting them. Tenants are protected by the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, No. 19 of 1998, also known as the PIE Act. If the correct procedures are followed, it can take at least eight to ten weeks for an eviction order to be granted during which time the landlord is out of pocket. Besides the fact that the landlord is not getting a rental income from the defaulting tenant during that period, they will also have to pay legal costs. An unopposed eviction could cost between R12,000 and R20,000 in legal costs plus disbursements, while the cost of an opposed matter will be substantially more. This is why landlords want a few months rent stored away in case this worst-case scenario were to occur.

Where does this deposit go?

When a tenant pays the deposit, the landlord is required by the Rental Housing Act to place the money in an interest-bearing account, held with a financial institution. The tenant is within their rights to request a statement of the interest earned on the money at any time during their tenancy. Even though the deposit is paid to the landlord, it remains the tenant's money. The landlord is merely holding the money as a security measure, should the tenant default or breach the rental agreement. If the tenancy runs its normal course, the deposit along with all interest earned on the money must be paid over to the tenant at the end of the lease agreement period within seven days of the lease's expiration date.

What deductions are allowed?

The landlord is entitled to deduct from the rental deposit any expenses incurred repairing any damage to the property which occurred during the tenancy. The remainder of the money must then be refunded to the tenant no later than 14 days after the restoration of the property as dictated by the Act. If repairs are done, the tenant can request to see all repair receipts to confirm that the money was spent to repair the damage they did to the property. The landlord cannot use the deposit for general maintenance or upkeep of the property. If there is no damage to the property, the full deposit and interest must be paid to the tenant within seven days of the lease's expiration date.



EXPLAINING BREACH OF CONTRACT

A breach of contract can be defined as a legal cause of action in which a legally binding agreement is not honoured by one or more parties who have signed the contract. A breach of contract occurs when one of the parties fails to perform or performs late on their contractual obligation.

Breach of contract examples for tenants: defaulting on payments, making structural changes to the home, or keeping pets when the lease agreement stipulates not to.

Breach of contract examples for landlord: failure to maintain aspects of the property that were stipulated in the lease agreement. However, in this situation, the onus is on the tenant to prove that the landlord is in breach of the contract and has failed to uphold their side of the deal.

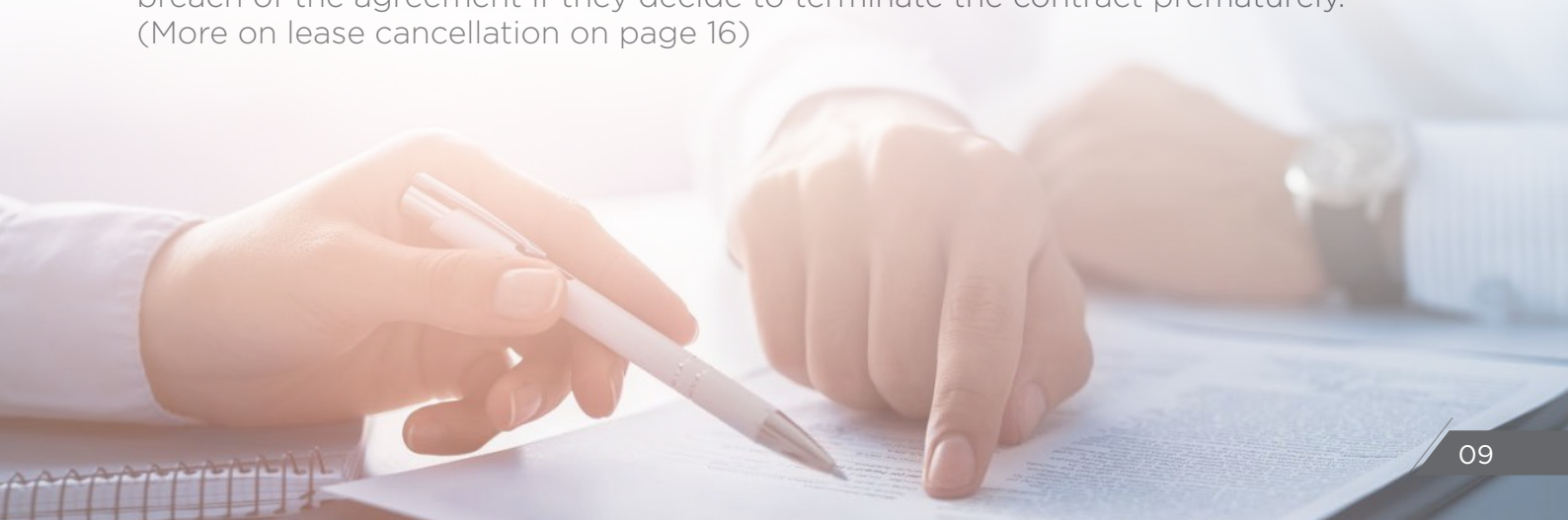
What can landlords do about it?

If the breach is minor, the landlord can give the tenant notice to repair or correct the breach. According to the Consumer Protection Act (CPA), landlords must give 20 working days' notice to their tenants to allow them to rectify the breach of contract. Should the tenant fail to fix the issue within the given timeframe, the lease can be cancelled if you provide a notice of cancellation to the tenant. For a major or material breach in contract, landlords can cancel the lease completely and instruct the tenant move out immediately.

According to The Rental Housing Act, any cancellation must be done within a fair practice, even if you have added clauses that can protect you should your tenant break the agreement by, for example, stating that you have the right to cancel the lease agreement should the tenant fail to pay his or her municipal charges on time. Even if these clauses are in place, landlords still have to follow the correct procedures for cancelling a lease agreement.

Is ending the lease agreement early a breach of contract?

The answer to the question will depend on the cancellation clause within the lease agreement. Unless there are grounds for cancellation of the agreement, which is stipulated in the cancellation clause, it can be rather difficult to get out of a lease agreement without any recourse. Even if the lease agreement doesn't contain a cancellation clause, the tenant or the landlord can still be considered to be in breach of the agreement if they decide to terminate the contract prematurely. (More on lease cancellation on page 16)



RESOLVING DISPUTES WITH TENANTS

There is a free portal of advice that landlords and tenants can use to resolve disputes without incurring massive legal fees, namely the Rental Housing Tribunal (RHT). The RHT implements the Rental Housing Act and assists with resolving disputes such as verbal or written lease agreement disputes, rights and duties, deposit refunds, rental defaults, property damage, utilities, eviction etc.

How does it work?

Anyone who has a vested interest in a rental property may lodge a complaint with the RHT. The service is free to landlords and tenants, and each party may represent themselves in the matter. The RHT will inform landlords and tenants of both their rights and obligations regarding the Rental Housing Act and will then investigate and mediate the situation at hand to resolve it by making recommendations to the relevant parties.

Lodging a complaint with the RHT:

Step 1: Contact the relevant RHT office that has authority in the area your rental is situated. According to legislation, your complaint must be in writing. Each provincial office has different forms on which the complaints are to be lodged and can be lodged by registered mail or fax. Once you've submitted your complaint, you should follow-up to ensure it's reached the right person.

Step 2: Once a case is opened, a reference number will be allocated to the matter before a preliminary investigation is conducted. Within 30 days of receiving the complaint, the investigation must determine whether the complaint relates to unfair practice or not. To define this, the RHT may require additional information from either the complainant or respondent. In certain instances, an inspector may be appointed to inspect the property in question and compile a report on the complaint.

Step 3: If it's deemed unfair practice, all parties are informed in writing that the case is open and the date and time for mediation are presented to them. A mediation is an informal, confidential meeting where both parties meet to discuss their issues in the presence of a trained, experienced mediator. The mediator remains impartial and assists the parties to come to a mutually acceptable solution. However, the landlord and tenant will be the ones who make the final decision. Once the parties have reached an agreement, it's possible for the agreement to be made an order of the court. If no agreement is reached at the informal mediation, the matter will be referred to a formal hearing for the ruling.



LATE RENTAL PAYMENTS & EVICTIONS

Landlords cannot simply evict their tenant as they're protected by the Prevention of Illegal Eviction from Unlawful Occupation of Land Act, No. 19 of 1998 (PIE Act). The act applies to the occupation of premises which constitute a dwelling, which in the case of a landlord and tenant relationship would be the residential property.

Step 1: Verbal Warning

If the agreed-upon payment date has come and gone, you should immediately contact your tenant to inform them of the overdue payment. If the tenant is facing financial difficulties, landlords may agree on a later payment date – however, you are not obligated to offer this.

Step 2: Written notice of contract breach

Next, you should send your tenant a notice informing them that they have breached the lease agreement. Landlords should ensure that the lease agreement is comprehensive and in line with the Consumer Protection Act (CPA). According to the CPA, landlords are required to provide a notice of at least 20 business days to their tenant to allow them to rectify the breach.

Step 3: An interdict or cancellation

Should the tenant fail to rectify the breach within the given timeframe, the landlord has two options – proceed with a summons or immediately cancel the agreement. If, after the summons is issued, tenants still have not made any attempt to pay the outstanding rental amount, landlords are within their right to cancel the lease agreement.

Step 4: Eviction process

If the agreement is cancelled, tenants will no longer fall under the protection of the PIE Act and will be regarded as an illegal occupier. According to the PIE Act, the landlord will then be able to evict their tenant legally. Once the lease is cancelled, landlords can initiate the summons proceedings and the eviction proceedings simultaneously.

Step 5: Eviction notice

The application to evict an illegal occupier must be made to either a Magistrate's Court or the High Court. If the application is unopposed, it can take between 8-10 weeks for the eviction order to be granted. It's common practice in South Africa to provide the tenant with at least another 14 days to find new accommodation before the eviction order is executed.



EVICTED NOTICE
NOTICE NONPAYMENT OF RENT

To Tenant

has been notified to vacate the premises

NEGOTIATING RENTAL ESCALATIONS

On the anniversary of the lease, the landlord and tenant must decide upon two things: whether to agree to a renewal and secondly what escalation will apply.

Reasons for the lease not to be renewed:

- Tenant is tardy with rental payments
- Tenant has made an unnecessary number of unreasonable demands
- Tenant has been regularly uncooperative with access for contractors or inspections
- Complaints regarding their conduct in a Sectional Title Scheme or from neighbours
- Tenant has been dishonest or disrespectful in reasonably maintaining the property

Common misconceptions about rental escalations:

- The maximum is 10%
- That it needs to be in line with inflation
- An increase in rent obliges the landlord to make upgrades

How to set an amount:

For many landlords, escalations should reflect a fair return on their investment and should be market-related. An industry standard seems to be 10% per annum, but the landlord may decide to forego the increase or to increase this more than 10% to ensure the rental is market-related. The increase in rentals is influenced by supply and demand more than any other factor – but this does not mean that tenants have no choice but to expect whatever percentage the landlord decides.

Your tenant may choose to negotiate less of an increase if they want to and it is up to you to decide whether to agree to the request or select a new tenant who is willing to pay the higher amount. Sometimes it is better to keep a good, reliable tenant happy than to risk getting a new tenant who ends up defaulting on payments.



CANCELLING / ENDING THE LEASE

Normally, tenants and landlords will need to wait until the lease expires and issue notice that either party will not be renewing the lease. The notice period will be stipulated in the rental agreement in the form of a renewal clause.

If the lease agreement has expired and the tenant is still living in the property, then the tenant has effectively already entered into a new lease agreement and will need to follow the right procedures to cancel the contract. If the original lease agreement does not include either a cancellation clause or a renewal clause, both parties must still give the one month's written notice before its expiration if either party chooses not to renew the lease otherwise they may be held liable for breach of contract.

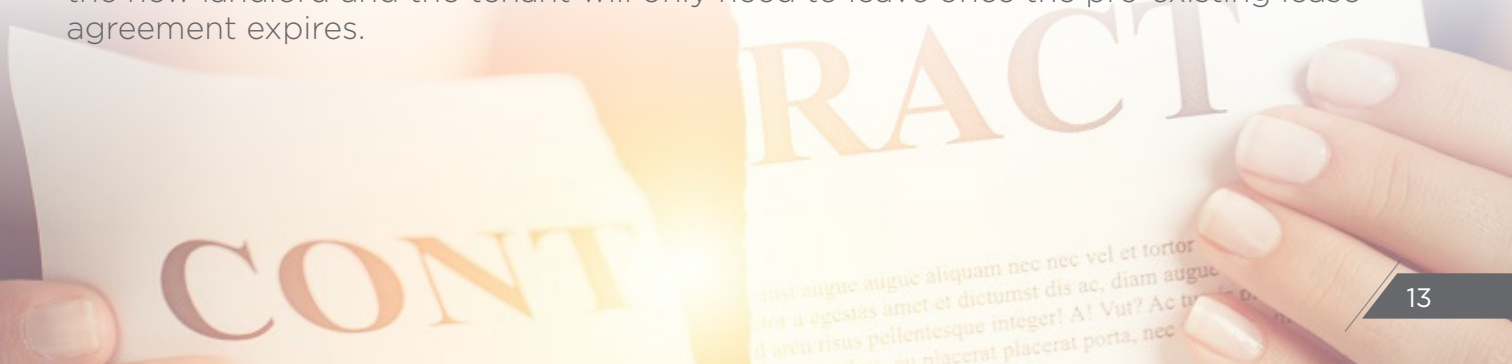
When tenants break the lease agreement early

If a landlord has met all the conditions of the lease, the tenant cannot simply terminate the lease agreement. They will have to discuss the matter with the landlord and agree on a solution, such as another tenant taking over the current lease agreement or subletting the property for the remainder of the lease period. It is imperative that any agreement made between the two parties is in writing to avoid any confusion or backlash further down the line.

If the tenant does not do this, the landlord is then within their rights to demand that the tenant pays the rental amount due to them for the remainder of the agreed upon tenancy period. The landlord is also within their rights to recoup reasonable costs that they may incur during the search for a replacement tenant if the current tenant ends the lease early. In certain cases, the tenant might be required to pay for the loss of rental income, advertising the property and letting agent's commission. While the Consumer Protection Act does not stipulate what would be considered a reasonable figure, the landlord cannot make up exorbitant figures and charge the tenant what they feel like. It is also illegal for the landlord to withhold paying the tenant their deposit unless there are substantial damages to the property which were caused by the tenant.

In the instance where the landlord has not met their end of the bargain and is therefore in breach of the lease agreement, the tenant will be able to cancel the lease agreement early without breaching the contract agreement and paying the penalties. In this situation, the onus is on the tenant to prove that the landlord is in breach of the contract and has failed to uphold their side of the deal.

Landlords also cannot end the lease agreement early unless they come to a written agreement with their tenant. Even if the landlord sells, the lease agreement goes with the home which means that whoever purchases the home automatically becomes the new landlord and the tenant will only need to leave once the pre-existing lease agreement expires.



CALCULATING TAX ON RENTAL INCOME

Rental Income Tax Deductions for Landlords

As a landlord, you're required to declare the total amount of rental income received as part of your taxable income. However, certain deductions can be made, such as a non-capital expense. Incurring certain expenses while letting out your property is inevitable when dealing with rentals. Luckily, if you deduct these non-capital expenses from your tax return, it'll reduce your taxable income and possibly put you in a lower tax bracket, which will be to your benefit.

Examples of non-capital expenses to offset against rental income:

- Rates, taxes, security, and property levies
- Interest paid on the home loan (if applicable)
- Advertising costs of marketing the property
- Rental agent's commission or fees for securing a tenant
- Insurance (only homeowner's insurance and not insurance for household contents)
- Garden services (if applicable)
- Repairs in respect of the area let (excluding improvements to the property)

Do not deduct expenses of a capital nature

It's important to remember that you can't deduct any expenses of a capital nature. This includes any expenses incurred while renovating or adding on to your property. If your tenant has moved out of the property and you decide to make repairs to the home to sell it, you can't deduct these expenses as they didn't happen while the tenant occupied your property.

What happens when you make a net rental loss?

If you find that the total deductions exceed the rental income received and you wish to declare a net rental loss, the Income Tax Act contains a ring-fencing provision that may come into play depending on the circumstances. If the provision does apply, you will not be able to offset your rental losses against income received from other sources.

Reminder: tax evasion is illegal

Evading paying tax on your rental income will get you into deep financial water. Rental agents are obligated to provide SARS with a record of the rental income received and paid over to landlords. As a result, it's very easy for SARS to find any discrepancies in a landlord's tax return. If you're found guilty of tax evasion after an audit, you could be facing a hefty penalty or worse – imprisonment.

When in doubt, reach out to a tax consultant

Trying to figure out tax deductibles can be a difficult task. If you're unsure about your tax return, it's best to consult with a professional financial adviser or tax consultant who can guide you through the process.

