

RE/MAX
OF SOUTHERN AFRICA

FIRST-TIME TENANTS GUIDE



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FIRST-TIME TENANTS GUIDE

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APPLYING FOR YOUR FIRST LEASE

Especially in high-demand suburbs, renting can be a race against time where the fastest applicant claims victory. To avoid the disappointment of losing out on your ideal property, be fully prepared before starting the process of looking for a place to rent.

Step 1: Find out what you can afford

The rule of thumb is that a tenant needs to earn two- to three-times the monthly rental amount. Not every rental will apply this rule as strictly, but it is safer to keep your search as close within this price bracket as possible.

Step 2: Clean up your credit record

Tenants need to have a good credit record before they can apply for a rental. You can build up a credit score from things like a cell-phone contract or a store account. Make sure to keep your credit record clean by paying the instalments timeously each month. You can check your credit record for any inaccuracies before applying for a rental by requesting an annual free credit report from local credit bureaus.

Step 3: Have all documents on hand

Make sure you have a copy of your latest payslip, latest three-month bank statement, as well as a copy of your ID readily available when you go to view a rental property. If you like the property, ask the agent for the rental application before you leave and make sure to send the completed form, along with the required documents, back to the agent that same day.

Step 4: Transfer the deposit

Once your lease application has been approved, secure the property by paying the deposit (more on this on page 3). The deposit is normally around two-months' rent upfront, and there can also sometimes be a nominal admin fee charged by the rental agents.



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 you need to pay a deposit?

The deposit exists largely to protect against defaulting tenants and the lengthy, expensive process involved evicting them (more on this on page 7). 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. Beyond this, the landlord also has to cover the legal fees of this process. This is why landlords usually require a few months' rent upfront in case this worst-case scenario were to occur.

Where does this deposit go?

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.

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.



AVOID RENTAL SCAMS

Sadly, there are a lot of scammers who will attempt to get money from a potential tenant for a rental property that they are not in a legal position to offer for rental. Unfortunately, there is no foolproof way to avoid a rental scam completely. However, potential tenants are more protected if they pay attention to the warning signs and deal with rental agents from a reputable agency.

How do the scams work?

The fraudster will place an advertisement for a property, usually offering a great deal to lure in a victim. Often the advertisement will include photos of the property, and in some cases, the scammer will include a copy of a fake contract which is ready to be signed. The rental property could either be real or fictitious, with the scammer impersonating the landlord or rental agent. The scammer will request that a deposit and possibly the first month's rent be paid into their account to secure the property. Once the unsuspecting tenant has transferred the agreed upon amount - the scammer disappears.

Red flags to watch out for:

- Don't transfer money without meeting the landlord or agent and seeing the actual property. Inspect the property before any money changes hands to know what you are paying for.
- Landlords and rental agents will have a vetting process, which will include a credit check. Beware of landlords or rental agents who are willing to sign contracts without following the correct protocols.
- Be wary of landlords or rental agents who request excessive deposit amounts or are never able to meet and show you the property in person.
- A lease agreement is an essential contract that protects both parties, so don't trust a landlord who says there is no need for one. A landlord who doesn't want to enter into a lease agreement may not have one to offer in the first place.
- Before signing a lease agreement, have legal representation review the contract.



RENTAL
SCAM

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. Examples include defaulting on payments, making structural changes to the home, or keeping pets when the lease agreement stipulates not to.

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 you fail to fix the issue within the given timeframe, the lease can be cancelled if your landlord provides a notice of cancellation. 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. This means that even if landlords add clauses that can protect them should their tenant break the agreement by, for example, stating that they have the right to cancel the lease agreement should the tenant fail to pay his or her municipal charges on time. However, even if these clauses are in place, landlords still have to follow the correct procedures for cancelling a lease agreement. (More on this on page 7)

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 can still be considered to be in breach of the agreement if they decide to terminate the contract prematurely. (More on this on page 9)



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:

- If you have been tardy with rental payments
- If you have made an unnecessary number of unreasonable demands
- If you have been regularly uncooperative with access for contractors or inspections
- Complaints regarding your conduct in a Sectional Title Scheme or from neighbours
- If you have 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

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. Tenants need to keep in mind that 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.

Ways to negotiate less of an increase:

1. You can confidently request a lesser increase if you have been a great tenant. This means always paying on time and in full – maybe even paying one day before the rent is due to ensure all utilities are paid promptly, which may give you leverage for your negotiations.
2. Good communication is key and keeping the agent/landlord informed of any maintenance (necessary maintenance) and being flexible with access for repairs, will make you stand out as a reasonable tenant.
3. Be reasonable and understanding that the agent or landlord cannot be obliged to attend to any and every small maintenance item. Sometimes fixing it yourself will aid your cause when negotiating less of an increase.
4. Keep a record of items you have attended to or improved in the property. Remind the agent or landlord of these without trying to coerce a lower increase.



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, your landlord should immediately contact you to inform you of the overdue payment. If you're facing financial difficulties, landlords may agree on a later payment date – however, they are not obligated to offer this.

Step 2: Written notice of contract breach

Next, your landlord should send you a notice informing you that you've 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 you 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, you 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, you 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

RESOLVING DISPUTES WITH LANDLORD

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.

CANCELLING / ENDING THE LEASE

Normally, you will have to wait until your lease expires and issue notice that you 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 you are still living in the property, then you have 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, you must still give the landlord one month's written notice before its expiration.

If, however, you want to terminate the lease before it has run its course, you may be held liable for breach of contract.

Consequences of breaking the lease agreement early

Unless there are grounds for cancellation of the agreement, which is stipulated in the cancellation clause, there will be consequences. Even if the lease agreement doesn't contain a cancellation clause, the tenant can still be considered to be in breach of the agreement if they decide to terminate the contract prematurely. 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.

Early cancellations without consequences

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.

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. Examples of this are if the property has become inhabitable or the landlord has failed to maintain aspects of the property that they have stipulated in the lease agreement that they would. 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 HAPPENS TO A TENANT WHEN A LANDLORD SELLS

Simply put, because the lease agreement is legally binding and was in place before the sale took place, it still stands – regardless if the owner of the home decides to sell. The lease agreement goes with the home which means that whoever purchases the home automatically becomes the new landlord and you will only need to leave once your pre-existing lease agreement expires.

The legal responsibilities when a landlord sells

The new owner will be responsible for all obligations held by the previous landlord. For example, if there was a security deposit paid at the initiation of the tenancy, the new homeowner will be responsible to refund you this amount at the end of the lease. The new owner of the home must ensure that they get this money from the seller otherwise they will find themselves out of pocket.

Final Advice

If you're a tenant who is feeling uneasy about the sale of your rented home or have any further questions, feel free to get in touch with a real estate practitioner from your nearest RE/MAX Office. To find your nearest office, visit www.remax.co.za or call 021 700 2000.

