

Eviction: prevention better than cure

Being stuck with a tenant who doesn't pay rent or isn't looking after your property and refuses to move out, no matter what you do, is every landlord's nightmare.



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In an ideal situation, it would be a simple matter to evict these kinds of tenants. Unfortunately, eviction is never an ideal situation.

“South African housing law does, arguably, favour tenants’ rights at this point in time,” says Jacqui Savage, the National Rentals business development manager at the Rawson Property Group. “And this stems from the need to protect citizens from the kinds of mass evictions that took place during apartheid, but it has left opportunities for unscrupulous tenants to take advantage of under-prepared or uninformed landlords.”

Contrary to popular belief, however, Savage stresses that landlords are not directly discriminated against in the Prevention of Illegal Eviction Act. They are simply required to follow a legislated procedure for dealing with problem tenants to enable a legally-enforceable eviction.

“That can, of course, be a long, drawn-out process,” says Savage, “which is problematic when rent isn’t being paid to the landlord in the interim, or tenant behaviour is causing damage to the property. There are ways to expedite the process, and you can insure yourself against this eventuality, but prevention is always better than cure.”

How does one prevent the need for eviction?

“First of all, you need to familiarise yourself with the Rental Housing and Prevention of Illegal Eviction Acts,” says Savage, “and understand your responsibilities under contract law and the Consumer Protection Act. It’s definitely advisable to sit down with an expert who can explain the relevant intricacies and how to protect yourself from a legal position – this is one of the areas in which a good rental agent can make a world of difference.”

As part of this process, you'll need to put together a rental contract that complies with all the legal requirements without leaving any loopholes. "Breach of contract is the trigger that begins the eviction process," says Savage, "but if you don't have an enforceable contract, breach can be impossible to prove. We always advise landlords to get professional assistance with their rental agreements, whether that's via a rental agent or a qualified attorney."

A solid contract is vital if things go wrong, but if you want to avoid ending up in that situation, screening potential tenants is just as important. "It's absolutely imperative that you check credit records, financial and employment histories, and get contactable references if at all possible," says Savage. "It can be tricky to get hold of some of this information as a private individual, but you should never, ever skip this step. If you're having trouble, rather get a professional to help you."

Deviating from the standard eviction process

If you've taken all possible precautions and still end up in the unfortunate position of needing to evict a tenant, Savage warns against being tempted to try to handle the problem "off the record" in an effort to speed things up. "Any deviation from the standard eviction process weakens your chances of success," she says. "It's vital that you dot all your i's and cross all your t's."

The eviction process starts with issuing the tenant with written notification that they are in breach of contract, and giving them a minimum of 20 working days to rectify the situation. If they don't comply, you can officially cancel your lease agreement and apply to the court for a summons, rent interdict and eviction action. "There are, of course, costs associated with taking legal action," says Savage, "but if you've made provision in your rental contract, it is possible to recover these costs from the tenant."

Ultimately, however, it is up to the courts to decide if your contract was legally cancelled and you have grounds for eviction. "This can be more complicated if your tenant opposes your action," says Savage, "but if you've followed the correct procedure and your actions have been lawful from the start, your chances of success should be good – it'll just take time."

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