

LEASE AGREEMENTS - IN AND OUTGOING INSPECTIONS – WHAT YOU SHOULD BE AWARE OF

Introduction

Entering into a residential lease agreement comes with several important considerations. The condition of the property ultimately affects one of the most critical factors of a lease, price! However, often is the case whereby upon cancellation of the lease agreement, tenants find themselves liable for damages they feel they should not have to pay for, or landlords find themselves having to fork out extra monies for repair work they feel should be for the tenant's account.

Inspections Explained

It is advisable that landlords and tenants always carry out joint moving in and moving out inspections. In fact, in terms of the Rental Housing Act¹ (hereinafter referred to as 'the Act'), it is mandatory.

A common practice landlord's use to protect themselves from financial loss is to request that tenants pay a deposit to be retained until the end of the lease period. Upon formal cancellation, should there be any defects or repair work that needs to be attended to, the cost thereof is set off against the deposit, and the balance is returned to the tenant.

The complication arises when the landlord recognises defects that the tenant either does not agree to or where the severity of the repair work and cost thereof is disputed. The situation can become uncomfortable since deposits are usually a few months' rental and therefore, quite a significant amount could be forfeited by the tenant.

The Rental Housing Act

As stated above, the Act provides explicitly for joint inspections before the tenant moves into the premises², also referred to as an ingoing inspection. The intention of the inspection is so that the landlord and tenant can agree to any defects or damage that the landlord is to be held liable for.

¹ No 50 of 1999.

² Section 5(3)e of the Act.

This standard practice is to include a list of all the repair work to be attended to by the landlord as an annexure to the lease agreement.³

Similarly, the Act also provides for a joint inspection upon the tenant moving out of the premises. Under Section 5(3)f of the Act, this moving out inspection is to occur within three (3) days prior to the agreement expiring or being cancelled. The intention here would be to ascertain the damage caused by the tenant during their occupation, should any exist. Such damage would then be for the outgoing tenant's account.

Failure to Conduct the Inspection

If either party fails to comply with the inspection provisions, they stand to forgo certain protections provided by the Act. For example, should the landlord fail to inspect the premises in the tenant's presence, it will be considered an acknowledgement by the landlord that the premises are of an acceptable condition not requiring any repair work.⁴ The landlord will then be liable to return the full deposit to the outgoing tenant plus any interest earned on the deposit.

However, should the tenant refuse or fail to appear at a requested moving out inspection, or outgoing inspection, the landlord can then conduct an inspection within seven (7) days of the lease agreement expiring. The prejudice that the outgoing tenant risks in this situation is that there is a potential window for a misinterpretation of the final condition the premises was left in.

Conclusion

For the sake of transparency and proper liability, it would be in both parties' best interests to conduct the inspections upon the tenant moving in and moving out of the premises. In this way, all involved can be satisfied that the proper liability is attributed to each party. It would further assist in that there would be fewer complications each party would face in terms of deposits and the refunding thereof in the proper amounts.

It is always advisable to contact an experienced professional in the event of entering into lease agreements, whether as a landlord or tenant. Be sure to make use of the further resources available at Contracts4biz.co.za or to contact an attorney at SchoemanLaw for advice.

³ Section 5(7) of the Act.

⁴ Section 5(3j) of the Act.