

Short notes on:

SPOILIATION ORDERS AND VALID EVICTIONS

Introduction

As South Africans we have had to endure many hardships brought about by the COVID-19 pandemic, especially the negative impact that it has had on the economy. This has resulted in many businesses in South Africa closing their doors as well as job losses and pay cuts which effects tenants' ability to pay rent. The inability of tenants to pay rent compounded with the delays concerning evictions is frustrating landlords and may tempt them to take the law in to their own hands which constitutes self-help.

Mechanisms Available To Tenants

Acts like unlawfully cutting off the tenant's electricity and water or changing the locks is considered self-help and the tenant will be able to apply to the court for a spoliation order. Spoliation is wrongfully depriving another of their right of possession.' The aim of spoliation is to prevent self-help. It seeks to prevent people from taking the law into their own hands.' (*Ivanov v North West Gambling Board and Others* 2012).

The requirements that have to be met for a successful reliance on the spoliation remedy are as follows:

- Peaceful and undisturbed control of a thing must have been enjoyed by the applicant (*spoliatus*);
- The control of the applicant must have been disturbed by the respondent (*spoliator*) in an unlawful manner.

The valid defences that can be raised against the spoliation remedy are as follows:

- At the time of spoliation, the applicant did not possess peaceful and undisturbed control;
- The applicant's control was not disturbed by the respondent;
- The disturbance that occurred was not unlawful, like in the case of a court order;

- The applicant allowed too much time to pass before making the application;
- If the restoration of control is not possible.

Lawful Methods Available To Landlords

Eviction is procedure in terms of the *Prevention of Illegal Eviction form and of Unlawful Occupation of Land Act 19 of 1998* (hereafter “The Act”). In terms of the Act, if the relevant requirements are met as set out in the provision, the landlord can initiate proceedings for the eviction of the tenant. This proceeding gets put into motion by means of a court order, and the court will only grant the court order if it is just and equitable to do so.

In terms of the level 1 lockdown regulations eviction orders can still be applied for by landlords and granted by the court. However, the sheriff may not execute the order until the end of the National Disaster unless the court has ruled that it may be executed because it is just and equitable to do so.

Conclusion

In conclusion taking the law into your own hands is not a good idea as a spoliation order can delay the process for landlords to evict tenants and can have serious financial implications. The lockdown regulations make it more difficult for tenants to be evicted but it is not impossible. It is therefore, of utmost importance to consult with a professional before taking any action.

Contact an attorney at SchoemanLaw for your legal needs.