

EVICTION – SOLVING THE LANDLORD’S WORST NIGHTMARE

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The need to evict a defaulting tenant is unfortunately a common occurrence, particularly in times of recession and rising living costs. To add insult to injury, the situation of a tenant refusing to vacate let premises usually goes hand in hand with the tenant being in arrears with unpaid rental and utilities, giving rise both to a damages claim and eviction proceedings.

There are two stages to an eviction:

STAGE 1: SECURING YOUR RIGHTS AS OWNER

It is very important that you examine your lease carefully to make sure that you have validly cancelled the lease. It may be patently clear that the tenant has breached the lease (for example by not paying rental) but, unless you have validly cancelled the lease (usually by sending a breach notice and then a cancellation letter), you may not have the legal right to ask a court for the tenant’s eviction.

You may also be required to comply with the notice periods under the Consumer Protection Act of 2008.

Once you have ensured that the lease has been validly cancelled and that the tenant is now in unlawful occupation, you can exercise your right as landlord to evict your former tenant.

STAGE 2: EVICTION PROCEEDINGS

It is important to choose the correct procedure and the correct forum for your eviction proceedings.

The procedure for evictions from commercial property is different to that for evictions from residential property (the latter requires compliance with the Prevention of Illegal Eviction From and Unlawful Occupation of Land Act of 1998).

With regard to your choice of forum, you can bring eviction proceedings either in the Magistrates Court or in the High Court, each of which has advantages and disadvantages. Depending on the facts, you may initiate proceeding by way of an application (on affidavit) or an action (by the issue of summons).

It is vital that you take the most effective steps available to you so that you can minimize your costs and recover control of your property. At Fourie Stott, we are well placed to guide you on your rights and remedies in respect of evictions, and to assist you to act quickly and to have a good lease in place so that the risk of your having to repeat the eviction procedure is reduced.

It should also be borne in mind that alternative dispute resolution is always an option, and if a problem can be solved through good negotiation without the need for litigation, then those avenues should be explored.

For professional advice and assistance with your lease agreement please contact Stuart Fourie (stuart@fouriestott.co.za) or Vicky Stott (vicky@fouriestott.co.za). For commercial and residential evictions please contact Chris Salmon (chris@fouriestott.co.za).