

REGULATIONS UNDER THE RENTAL HOUSING ACT

Introduction

Lease Agreements between Landlords and Tenants have been a hot topic in the last few months as many have found themselves in a challenging position because of the COVID-19 pandemic. While many Tenants have lost their jobs and, therefore, have been unable to keep up with rental payments; Landlords have similarly been struggling to meet their financial obligations, especially where rental income is their primary source of income.

The above tensions are being experienced amidst a concerted effort by the Government to better regulate the contractual relationship through draft regulations that are currently open for public comment.

Rental Housing Act

The Rental Housing Act¹ (hereinafter referred to as the 'Act') placed an onus on Government to develop a framework of regulations and standards that would promote a stable and growing rental market to satisfy the need for access to affordable housing by previously disadvantaged individuals and groups of persons.² This framework is further to promote rental housing partnerships with the private sector³, showing the Act's intention to make the idea of rental relationships a commercially beneficial one.

Regulations in terms of the Act

Minister for Human Settlements, Lindiwe Sisulu, recently published the Regulations Under the Rental Housing Act, 1999 (hereinafter referred to as 'the Regulations') for public comment. Once effected, the Regulations will, amongst other things, provide the process for the filing of a complaint with the Rental Housing Tribunal, what responsibilities the Rental Housing Tribunal will have upon receipt of a complaint, the process of mediating disputes and the process of any formal hearings. However, the focus of this article will be more on Chapter 7, the Norms and Standards of a Lease Agreement.

¹ Act No 50 Of 1999.

² Section 2(1) read with Section 2(3) of the Act.

³ Section 2(1)b of the Act.

Chapter 7: Norms and Standards

Under Chapter 7 of the Regulations, the Norms and Standards include a few provisions that Landlords and Tenants would find interesting. As a point of departure, all written Lease Agreements would have to comply with the requirements already included under Section 5 of the Act. This would include the Landlord is to furnish the Tenant with a written receipt of all payments received by the Landlord from the Tenant.⁴, the requirement of a deposit to be paid by the Tenant and moving-in and moving-out inspections.⁵

However, the Regulations provide that certain provisions must be excluded. Regulation 48(4)a states that a Lease Agreement must exclude any provision which *'imposes a penalty for late payment of rent whether or not the penalty [t]akes the form of an administrative charge or any other form other than interest.'*

The Regulations further set out the Landlord and Tenant's responsibilities in matters such as the maintenance of the property inside and outside of the dwelling, the onus of repair under a Lease Agreement and the expected conduct of the Tenant.⁶

Conclusion

These Regulations intend to provide more certainty about each party's position and expectations to a Lease Agreement. As is usually the case, with more public confidence comes a more robust and more effective usage of the provision or policy. The Regulations are open for public comment for sixty (60) days from 26 March 2021, and all comments can be submitted by post to the office of the Director-General of the Department of Human Settlements or by electronic mail to Ms R Murray (Rose.Murray@dhs.gov.za) or Ms L Masilo (Lisa.Masilo@dhs.gov.za).

Contact SchoemanLaw Inc for all your Landlord and Tenant and property needs.

⁴ Section 5(3)a

⁵ Section 5(3) c; e and f.

⁶ Regulation 49(1) and (2).