

Short notes on:

HOW TO LEGALLY EVICT A TENANT FOR NOT PAYING RENT

Introduction

So you have been stressing for months about unpaid rent due from your tenant, and you are unsure how to remedy the situation. On top of that, you are unsure if you may evict your tenant legally, as you don't have a written lease agreement.

Whether you have a written lease agreement or not, below are simple yet effective steps to evict your tenant legally.

Process

As stipulated by the [Prevention of Illegal Eviction and Occupation of Land Act 19 of 1998](#), a landlord has to follow the legislated procedure when evicting tenants LEGALLY.

After an initial attempt to negotiate, by either calling your tenant or speaking to them in-person to pay the unpaid rent, you can proceed with the legal eviction process as stated below:

1. Firstly, notify the tenant in writing to rectify any breaches (e.g. outstanding rent due), giving the tenant a time frame to rectify the relevant breach. If the time frame is not specified, then it will be 20 days according to the [Consumer Protection Act 68 of 2008](#). And If there is no lease agreement, then the tenant will be given one calendar month's notice to rectify the breach.
2. If No Rectification has occurred, then you as the landlord has the right to terminate the lease agreement. You will also need to notify the tenant that you have terminated the lease and give a date by which the tenant must vacate the premises.
3. If the tenant does not vacate the leased premises by the specified date, you, as the landlord, have a right to apply to the courts for an Eviction Order. The tenant will also need to be informed that you will now be proceeding with legal action.

4. You will now need to apply to the Magistrate Court or High Court (depending on the jurisdiction of the specified property) for an Eviction Order. You (the landlord) will be provided with a date and time for the eviction application to be heard.
5. The tenant, as well as the municipality in which the property is situated, must be served with written notice of when the eviction order will be heard. The authorised Sheriff must serve this written notice at least 14 business days before the eviction hearing is heard in court.
6. During the Court Hearing, the tenant will need to prove that they have a valid defence for not paying rent.
7. If the court decides that there is a valid defence, then a trial date will be set for the tenant to present their evidence. If there is no valid defence, a Warrant of Eviction is issued, which allows the Sheriff to remove the tenants' possessions from the property.

Conclusion

The process can be a complicated one. It's, therefore, always a good idea to seek legal assistance where the matter has entered the litigious phase.

Contact an attorney at Schoemanlaw for your Legal Needs