

Tenant eviction in South Africa - What are your rights as landlord?

For most landlords, tenant evictions are a last resort, due to the substantial expense, lengthy time and emotionally taxing nature of this complex process.



Source: Grant Smee, managing director of Only Realty Property Group.

However, with the Q2 2023 PayProp Rental Index revealing that the number of tenants in arrears has risen to an alarming 18.4% - the highest figure recorded since 2021 - many have found themselves with no choice but to seek legal recourse.

While unpaid rent is just cause for ousting a problematic tenant, Grant Smee, managing director of Only Realty Property Group stresses that landlords must do their research and have an intimate knowledge of the law before initiating eviction proceedings.

“The Rental Housing Act of 1999 governs the relationship between landlords and tenants in South Africa, outlining the rights and responsibilities of both parties,” he explains. “Under this Act, tenants can only be evicted for valid reasons recognised by the law, which constitute a breach of a lease agreement.”

These include:

- Rental arrears. Persistent late or incomplete rent payments may lead to eviction, though some landlords allow a grace period to settle the balance.
- Engaging in illegal activities on the property. Tenants involved in criminal activities like theft, drug dealing, or sex work can be evicted with proper evidence.
- Property damage. Tenants must maintain the property reasonably; negligence or failure to report structural issues may result in eviction.
- Lease agreement expiration. If a tenant stays beyond the lease's end, and you have given notice according to the lease agreement and legislation, they become an illegal occupier and must vacate.

“As grounds for a legal eviction are based on a breach of the lease agreement, it’s important to note that the 2022 Rental Housing Amendment Act requires that all lease agreements be in writing, which is the responsibility of the landlord,” says Smee. “Any lease agreements that have been verbally agreed upon are not binding and therefore will not hold up in court.”

Illegal grounds for a tenant eviction

Under the Act, evictions cannot be based on discriminatory reasons, such as race, gender, ethnicity, religion, or sexual orientation. “The court will also dismiss any eviction applications that appear to be retaliatory from the landlord – i.e. as retaliation for a tenant asserting their legal rights or complaining about poor living conditions.”

Tenants also cannot be evicted for requesting repairs and withholding rent until these repairs are made, forming a tenant’s association or refusing to pay an unauthorised rental increase.

“If a landlord fails to follow proper eviction procedures, as outlined below, the eviction can be deemed unlawful and challenged by the tenant in court, even if the reasons for the eviction are valid,” Smee stresses.



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How the eviction process works

The Prevention of Illegal Eviction and Unlawful Occupation of Land Act No. 19 of 1998 (PIE Act) outlines the proper procedures for evicting illegal occupants as follows:

- Step 1. When a tenant violates the terms of the lease agreement, the landlord's initial step should be to send a formal letter to inform the tenant of the breach. The letter should include a specific timeframe, typically set at 20 business days, for the tenant to rectify the breach. “If the tenant fails to address the breach during this period, the landlord has the legal basis to terminate the lease agreement and proceed with the eviction process,” says Smee.
- Step 2. If the tenant does not vacate the property upon lease termination, the landlord must inform the tenant of their intention to seek an eviction order through the court. Following this notification, the landlord can initiate the eviction process by filing an application at the Magistrate’s Court that holds jurisdiction over the property.
- Step 3. A written notice of the eviction hearing must be personally delivered to the unlawful occupier(s) of the property by the sheriff at least 14 days before the court date. The notice must clearly specify the date and time of the hearing, detail the reasons for the eviction, and acknowledge the unlawful occupier's right to present a defence.
- Step 4. All parties are required to attend the eviction hearing in court. If the unlawful occupier(s) does not appear, the court may either postpone the hearing or proceed in their absence, potentially resulting in the court granting an eviction order.
- Step 5. If the landlord is successful, the court issues a warrant of eviction to the sheriff, authorising him or her to remove the tenant’s possessions from the property.

Landlords must keep a cool head

To secure a successful eviction order, landlords must ensure that they have sufficient documentation and evidence that complies with the legal requirements. Given the complexity of the process, Smee recommends securing legal representation to navigate the court process.

“Evictions can quickly become ugly, and cool heads must prevail. Stick to proper procedures and don’t resort to illegal measures like changing the locks, switching off water and electricity or throwing out the tenant’s possessions before the court’s official judgement.

“Even in the case of an unopposed eviction, your legal costs can range between R25- to R35,000, excluding the mandatory

sheriff fees. This is why it's essential to thoroughly review a prospective tenant's rental application before signing a lease.

"This includes assessing their credit score, contacting references, and, in cases of uncertainty, conducting a background check. Sometimes the red flags aren't so apparent so it's crucial to perform due diligence," he concludes.

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