

## CANCELLING A LEASE: THE DEVIL IS IN THE DETAIL, EVERY TIME

### Acire Property Holdings (Pty) Ltd v Banzi Trade 31 (Pty) Ltd t/a Brick-It (7889/2021) [2021] ZAGPPHC 542 (25 August 2021)

To the naked eye, the following would probably appear to constitute a proper cancellation of a month-to-month lease: “... hereby give you notice of termination of the lease agreement with immediate effect. Without derogating from the fact that the lease agreement is a month-to-month lease and whilst we reserve all of our client’s rights in that regard, our client has decided to afford you until ... to vacate its property.” But, for good reason, the court held that it is not and the judgment summary below explains why. Take note that it is best to ask an attorney to assist you when you need to cancel an agreement, as the law has strict requirements in this regard, which have developed over years to ensure that both parties’ interest are considered.

The Judgment can be viewed [here](#).

## FACTS

In 2015, Acire Property Holdings (Pty) Ltd (“Acire”) entered into a written lease agreement with Banzi Trade 31 (Pty) Ltd t/a Brick-It (“Brick-It”).

The lease was for five years and terminated on 30 June 2020. After the termination date, Brick-It remained in occupation of the premises, both parties asserting that a month-to-month lease arrangement was in place.

On 9 November 2020, Acire sent a letter to Brick-It entitled “Letter of Cancellation of Lease Agreement and Notice to Vacate” (the “November letter”). The letter stated, amongst other things, that:

*“Our client has instructed us to hereby give you notice of termination of the lease agreement with immediate effect. Without derogating from the fact that the lease agreement is a month-to-month lease and whilst we reserve all of our client’s rights in that regard, our client has decided to afford you until 31 December 2020 to vacate its property.”*

Pursuant to the delivery of the letter, the parties attempted to find common ground on when Brick-It would vacate the premises, focusing on the amount of time Brick-It needed to regulate its affairs. The process failed and on 12 February 2021, Acire advised Brick-It that it had to vacate the premises immediately and that its right to occupation had terminated on the 31st of December 2020.

In February 2021, Brick-It was still in occupation. Acire then sought the eviction of Brick-It. In dispute before the Court was whether the November letter unlawfully communicated an immediate termination of the month-to-month lease agreement (as Brick-It contended), or did it communicate the termination of the lease agreement with effect from the last day of December 2020 (as Acire contended).

## HELD

- The lease had become a month-to-month lease, at least until communication of the November letter. Rental was paid on a monthly basis.
- Periodic leases of this nature continue until terminated by the giving of reasonable notice. Subject to any particular circumstances that might militate for a different conclusion, a month’s notice of termination is generally considered reasonable in the case of a month-to-month lease. Acire accepted that at least one

month's notice was required of it in the circumstances.

- However, in communicating such a notice, legal policy dictates that the notice must be clear in conveying: (i) that the lease is terminated; (ii) that the termination will take effect at the end of the period in question, not at its commencement.
- The November letter communicated a termination of the lease agreement "with immediate effect", not with effect from the 31st of December 2020. That the letter proceeded to "afford" Brick-It until the 31st of December to vacate the property, does not derogate from a termination of the lease agreement with effect from the 9th of November 2020 (the date of the November letter). To the contrary, the period for vacating the property was expressed in the November letter to be one that was "afforded" to Brick-It in the context of reserving all of Acire's rights, not on the basis that Brick-It was, as of right, entitled to such period of notice.
- A notice communicating the termination of the right of occupation, but not specifying when the termination will take effect, coupled with a period during which the lessee is given notice to vacate, would ordinarily communicate the termination of the lease at the end of the period of notice. The plain words of the November letter preclude that outcome.
- Thus the November letter, having communicated an immediate termination of the lease, was ineffectual in bringing about a termination of the lease on reasonable notice.

## CONCLUSION

The application was dismissed.