

## 24 HOURS FOR A LESSON HOW TO CANCEL A LEASE VALIDLY

### Banchan (Pty) Ltd v Des Naidoo and Associates and Another (8494/2023) [2023] ZAGPJHC 563 (25 May 2023)

*Often, when disputes arise in a lease or other agreement, both parties are at pains to record in detail where the other 'guilty' party contravened the provisions of their agreement. But, as case law has repeatedly highlighted, one must never lose sight of the weight that the breach and notice provisions in the agreement carry. This judgment is a case in point, where a notice was sent by the landlord giving the tenant 7 days to rectify the breach, failing which it would cancel the lease, as the agreement allowed. Misjudging the time with a mere 24 hours, the subsequent cancellation notice was sent prematurely, rendering the attempted cancellation unlawful.*

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

### FACTS

Des Naidoo & Associates ("DN&A") leased business premises from Banchan (Pty) Ltd ("Banchan") in terms of a written lease agreement.

The breach clause of the lease agreement provided, in the relevant parts, as follows:

#### *"9 Breach of lease*

##### *9.1 Should the tenant:*

*9.1.1 fail to pay any amount due ... and fail to make such payment or to remedy such breach within a period of 7 (seven) days after the receipt of written notice to that effect by the landlord...Then... the landlord shall be entitled to cancel this lease...."*

In addition, the following was recorded in the lease:

*"10.3.1 All notices delivered by hand to a domicilium address shall be deemed to be received on the day after delivery;*

*10.3.2 All notices delivered via electronic mail (email) to the numbers set out in the schedule during normal office hours shall be deemed as received on the day following such transmission..."*

DN&A fell into arrears with the monthly rental. Banchan thereupon duly hand delivered a notice of breach, dated 17 January 2023, to DN&A on 18 January 2023. In the notice, DN&A was alerted to the fact that they were in breach of the lease agreement due to their arrears in an amount of R53,519-00. In the notice, Banchan demanded payment of the arrears within seven days, failing which it would cancel the agreement.

Accordingly, when the money was not paid, Banchan hand delivered another letter to DN&A, dated 25 January 2023, stating that because DN&A had failed to remedy the breach (as demanded in the letter of 17 January) within 7 days, Banchan thereby cancelled the lease.

Banchan then proceeded to apply to Court for an order evicting DN&A from the premises, alleging that DN&A was in unlawful occupation of the premises.

#### HELD

- It was clear in the present matter that the cancellation notice dated 25 January 2023 was premature and accordingly invalid. If regard is had to the provisions of the lease agreement, then it has to be accepted that the breach notice was considered to have been given to DN&A at the earliest on 19 January 2023.
- Thus, as the breach notice was received by DN&A on 19 January 2023, they would have had seven days until 26 January 2023 within which to remedy the breach by paying the arrear rental. This is however one day after the day on which Banchan sent out the cancellation notice. Therefore, the lease was purportedly cancelled before the expiration of the 'notice to remedy the breach' period.
- The only conclusion was that the lease had not been lawfully cancelled.
- This, in turn, meant that Banchan was not entitled to an eviction order against DN&A.

#### CONCLUSION

The application failed.