

A practical overview of the residential eviction process.

01

LETTER OF DEMAND

- The lease agreement places various obligations on both the lessor and lessee.
- Should one of the parties be in breach of such an obligation, a letter of demand must be sent affording that party a certain time period to rectify the breach. This is called placing the lessor or lessee in *mora*.
- If the provisions of the Consumer Protection Act 68 of 2008 ('the CPA') are not applicable, the terms of the agreement will determine the time period that must be afforded to the party in breach to rectify this breach. If no time period is stipulated, seven (7) business days' notice is deemed to be a reasonable time period. Naturally, the circumstances surrounding the breach must be taken into account.
- If the lessee is in breach and the provisions of the CPA are applicable, a letter of demand must be sent in terms of section 14(2) of the CPA affording the tenant 20 business days to rectify the breach. Note that, if the provisions of the CPA apply, a lessee will always be entitled to cancel a lease agreement without any cause by giving the lessor 20 business days' written notice, which, in turn, allows the lessor to charge a reasonable cancellation penalty.
- The letter of demand must be addressed to the *domicilium citandi et executandi*, as chosen by the parties in the lease agreement ('chosen *domicilium* address').

02

LETTER OF CANCELLATION

- Should the party in breach fail and/or refuse to rectify the breach within the timeframe stated in the letter of demand, a letter of cancellation must be sent to that party at their chosen *domicilium* address.
- There are certain requirements which the cancellation letter must contain, the most important being a statement that the lease agreement has now formally been cancelled.
- Should the party in breach be the lessee, the lessor must also request the lessee to vacate the premises within a certain time period. Note that, if the lease agreement (for whatever reason) is a month-to-month lease, the notice period for cancellation must be one calendar month. In all other instances, a reasonable period must be given, which will vary on a case-by-case basis.

03

THE EVICION APPLICATION

- Should the lessee remain in occupation of the premises after the time period referred to in the cancellation letter has lapsed, the lessor's attorney may proceed to draft an application for the lessee's eviction.
- The lessor should provide their attorney with the signed lease agreement, an identification document, a copy of the letter of demand and cancellation letter, together with proof that both were served at the chosen *domicilium* address of the lessee.
- The eviction application is a two-step process. First, once the main application has been prepared and issued by the court, it must be served on the lessee and all other occupants in the premises, as well as the local authority (this is known as a section 4(1) application or main application). Once the main application has been served, the lessor's attorney must then prepare an *ex parte* application for the court to authorise service of a further notice (this is known as a section 4(2) application and notice, respectively). Once the court authorises the section 4(2) notice, it must also be served on the lessee, all other occupants, and the local authority.

04

SERVICE BY THE SHERIFF OF THE COURT

- Both the section 4(1) application and 4(2) application and notice are served by the Sheriff of the Court.
- The main application will specify a the date by when the lessee must indicate an intention to oppose the main application, failing such indication, the application will proceed on an unopposed basis.

05

THE FIRST COURT APPEARANCE

IF THE APPLICATION IS UNOPPOSED

- If the lessee fails to indicate that the application will be opposed, the application for an eviction order will proceed on an unopposed basis, and if the court is so satisfied, an eviction order should be granted.
- An order for the eviction of a lessee in an unopposed matter will, in most circumstances, not take longer than four months to obtain.

IF THE APPLICATION IS OPPOSED

- Should a lessee believe that there is a valid defence to the main application, they must indicate an intention to oppose and thereafter deliver an opposing affidavit setting out the defence. The lessor will have a right to deliver a response to the opposing affidavit, and thereafter, the court will set the matter down for hearing on a specified date.
- During the hearing, the respective legal representatives will argue their clients' cases and the court will then decide to either grant or refuse the request for an eviction order. The court must, in terms of the provisions of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act'), take certain factors into account before granting such order.
- An opposed eviction application can take up to 18 months before an order is made.

ALTERNATIVE

- At any time during the opposed or unopposed eviction process, the parties may attempt to settle the matter and incorporate the terms of the settlement into a settlement agreement, which will then be made an order of court.

06

GRANTING THE ORDER

- A court will only grant an eviction order after considering all the circumstances and if it is of the opinion that it is just and equitable to do so.
- The only way to legally evict a lessee is by means of a court order. Lessors may not resort to self-help by, for example, changing the locks of the premises.

06

GIVING EFFECT TO THE COURT ORDER

- If the court grants an eviction order, such an order will specify the date upon which the lessee (and all others who occupy the premises) must vacate the premises. If the lessee fails to vacate the premises on said date, the sheriff will be authorised to remove the lessee from the premises after a warrant of ejection has been issued by the court.

For more information, contact us at info@stbb.co.za