

09 February 2024

EARLY TERMINATION OF A LEASE AGREEMENT: TENANT VS LANDLORD

Life happens and one may need to terminate a lease agreement before the agreed upon period has lapsed.

The Consumer Protection Act permits a tenant to cancel the lease agreement by giving the landlord 20 business days' notice of intention to move out. This is however subject to a reasonable cancellation penalty fee imposed by the landlord.

The reasonable cancellation penalty fee can be determined, under Regulation 5(3) of the CPA by considering:

1. The amount which the consumer is still liable for to the supplier up to the date of cancellation;
2. The value of the transaction up to cancellation;
3. The value of the good which will remain in the possession of the consumer;
4. The duration of the consumer agreement as initially agreed;
5. Losses suffered or benefits accrued by the consumer as a result of the consumer entering into the consumer agreement;
6. The nature of the goods or services that were reserved or booked;
7. The length of notice of cancellation provided by the consumer;
8. The reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and
9. The general practice in the relevant industry.

Regarding the rights of the landlord to terminate the lease agreement early, the legislation is much more rigid. The Consumer Protection Act states that the landlord is permitted to terminate the lease agreement early, but only if there is a material breach on the side of the tenant – thus, where no breach exists, the landlord cannot terminate the lease agreement unilaterally. The Rental Housing Act determines that where the initial agreement expired, and the tenant stays on, the agreement becomes a periodic lease agreement, and either party must give one month's notice of intention to terminate the lease agreement. Fixed period lease agreements can therefore not be terminated by the landlord without there being a material breach.

It is therefore always advisable that an early termination clause with clear conditions be included in the lease agreement to avoid any future disputes.