

SECTIONAL TITLE – TENANTS

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Communal living in a sectional title complex (“Scheme”) can be difficult at times because it involves a wide range of people with diverse needs, interests, languages, and cultures which sometimes clash. The ability to live harmoniously can also be difficult due to the high number of tenants residing in sectional title units within the Scheme, who are sometimes unaware that they are also bound by the Conduct and Management rules of the Sectional Titles Act, 1986 (“Sectional Titles Act”).

The purpose of this newsletter is to outline some of the major issues that often arise between a Body Corporate and a tenant within a Scheme, and what trustees of the Body Corporate can do in order to prevent and regulate these disputes.

1. LOCUS STANDI AND PRIVACY OF CONTRACT

In plain terms the above means: Can the Body Corporate (“BC”) sue and evict a tenant for being a nuisance within the Scheme and for not abiding by the provisions of the Sectional Titles Act, Management and Conduct Rules?

The short answer is - no. The lease agreement between an owner and a tenant is between the owner and the tenant. As the BC is not a party to this contract, it cannot lawfully bring eviction proceedings against the tenant. The owner is however liable for the actions of his/her tenants, employees, guests, occupants and members of their family, and the BC can exert pressure on the owner through application of the Sectional Titles Act, Management and Conduct Rules to ensure that the offending tenant complies with his/her obligations to the other residents of the Scheme.

2. APPLICABLE LAW

The following legislation applies to the above situation:

- 1) Sections 5(8) and 5(9) of the Rental Housing Act 50, 1999 (“Rental Act”) provide that the landlord must ensure that a copy of any Management and Conduct Rules (“House Rules” are defined in the Rental Act as rules relating to the control, management, administration, use and enjoyment of the rental housing property) applicable to the dwelling must be attached as an annexure to the lease. This is peremptory.
- 2) Prescribed Management Rule 69 of the Sectional Titles Act provides that the provisions of the Management Rules and of the Conduct Rules, and the duties of the owner in relation to the use and occupation of sections and the common property shall be binding on the owner of any section *and any lessee or other occupant of any section* (our emphasis). It further provides that it shall be the duty of the owner to ensure compliance with the rules by his/her lessee or occupant, including employees, guests and any member of his/her family, his/her lessee or his/her occupant.
- 3) Prescribed Conduct Rule 10 of the Sectional Titles Act deals with the letting of sectional title units and provides that all tenants of units and other persons granted rights of occupancy by any owner of the relevant unit are obliged to comply with the Conduct Rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy.

3. REMEDIES

A BC should therefore take the following steps to ensure that tenants comply with the Management and Conduct Rules of the Scheme:

- 1) Notify all landlords within the Scheme that a copy of the Management Rules, Conduct Rules and any applicable House Rules must be annexed to their lease agreement/s.
- 2) Ensure that the BC or managing agent administering the BC has detailed contact details of the landlord and the tenant, including a residential or employment address for service of letters and legal documents. A postal address or email address is not sufficient for service by a Sheriff of court processes such as a summons.
- 3) Amend the Prescribed Management Rules or Conduct Rules to clearly set out a process where a reasonable fine can lawfully be levied against an owner of a unit in the Scheme and added to the levy account should the tenant contravene any Management or Conduct Rules.
- 4) Ensure that the owners are aware that in terms of the Sectional Titles Act the unit address within the BC is the landlord's default *domicilium* for the service of all legal process on the landlord. The landlord should ideally nominate his/her residential address as his/her *domicilium* in writing so that the BC can advise him/her of any transgressions by his/her tenants before imposing any fines.

If, notwithstanding the above suggestions, the landlord and tenant still fail to comply with their obligations, the BC can either bring an interdict compelling the tenant to comply with the Management and Conduct Rules, or declare a dispute with the owner in terms of Prescribed Management Rule 71 and refer the matter to arbitration. These remedies are costly, and if defended can take some time to finalise.

4. CONCLUSION

If the BC ensures that it is on top of its administration and ensures that reasonable fines can be levied lawfully against owners in respect of their tenants, there is no reason why issues arising between the BC and absentee landlords failing to deal with nuisance tenants cannot be dealt with effectively, reasonably, and transparently.

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