

Legality of municipal disconnections

By [Chantelle Gladwin](#) and [Rogan Heale](#)

29 Mar 2016

Many people think that a municipality is not entitled to disconnect one's service if that service is fully paid up but another service is in arrears. This is not correct. A municipality is fully entitled to disconnect the supply of any service whatsoever supplied to a property, where there are undisputed arrears owing in connection with any other service billed in connection with that property.



© Claudia Schnepf – [123RF.com](#)

Pre-termination notices

The law provides that a municipality must give the consumer (and the owner of the property, if the consumer of the services at the property is not the owner) a minimum of 14 days written notice of termination of the supply of electricity and water. If this notice is not given to the occupants of the property and the owner, if the owner is not the same as the occupant, then the disconnection is illegal.

Furthermore, if less than 14 days has elapsed between the date of delivery of the pre-termination notice and the date of disconnection then similarly the disconnection is illegal.

The purpose of giving a person 14 days is to allow that person to respond to the municipality within that time and raise any disputes about the charges that are purportedly owing or to allow the person to make payment of the arrears or make other payment arrangements with the municipality, such as by entering into an instalment payment plan. If a consumer is denied this opportunity, then this is a violation of that person's rights in terms of our administrative law and Constitution and the disconnection is accordingly unlawful.

Pending queries

It is unlawful for a municipality to disconnect a consumer, whilst there is a query pending in relation to that consumer's account, if the quantum or value of the disputed charge equals or exceeds the amount of arrears on the account.

For example, if you have lodged a query in relation to R50,000 of disputed water charges, but at present your bill is sitting

at R100,000 (which includes the disputed water charges and other undisputed charges) then the query logged in relation to the disputed water charges will not protect you from disconnection because there are other arrears owing which are undisputed. You can legitimately be terminated for non-payment of undisputed arrears, even if you have raised a dispute in relation to other charges on the same account.

Payment of current and undisputed charges

In terms of the bylaws of most municipalities, a query logged in relation to any municipal account will only remain valid for so long as the customer continues to pay the current and undisputed charges billed to it on a monthly basis. What this means is that if you fail to pay your current charges (or any portion of your current charges that are undisputed) you can be disconnected, even if you have an existing and unresolved query in relation to other disputed charges on your account.

In addition, some municipalities provide that where you dispute the charges billed on a monthly basis for any particular service (for example, electricity, perhaps because you are of the view that your meter is faulty or the charges are too high, being based on inflated estimated charges) you must then pay the average of the prior three month's undisputed charges for that service (i.e. the last time that you did not dispute your electricity charges, you take the average of three months for that service, and make payment of that amount for electricity rather than the amount currently billed to you) in addition to all other undisputed charges. Failure to make payment of current and undisputed charges in terms of the relevant by-laws/policies will render you subject to credit control action, which could include disconnection or being summonsed to court to pay.

Prior owners' debt

A recent case in the Gauteng Local Division of the High Court in Johannesburg offers persuasive authority (but does not create legal precedent) for the principal that a municipality may not terminate a purchaser's electricity or water supply, as a result of outstanding debts incurred by the prior owner of the property. This principal has yet to be tested in court and so now, there is no conclusive answer to this question in law, although until another judgment settles the issue, there is at least persuasive authority to support purchasers battling with this issue.

Allocation of payments

Although the manner in which payment is allocated to a municipal account is not directly linked to the issue of when a municipality is lawfully entitled to disconnect or not, it does affect the legality of the disconnection indirectly. This is because if a consumer is disputing any portion of his account, and that consumer, before making payment of any undisputed charges on that same account, does not notify the municipality in writing that the payment made must be allocated only to the undisputed charges, a municipality will then have the right in law to allocate that payment in any manner that it wishes.

This may (or may not) result in the consumer's payment (which he intended to be for undisputed charges) being allocated towards a portion of, and settling a portion, the disputed charges that the consumer was not intending to pay. When this

happens a consumer will be very surprised by the advice given to him by the municipality that the dispute that he logged is no longer valid (it having been settled by his payment of the disputed charges), because he would be of the view that his dispute should be valid and pending, seeing that he had continued to pay his current and undisputed charges on a monthly basis.

As a result, the consumer's query will be closed (the disputed charges having been paid) and he would be liable to disconnection or other credit control action in respect of the unpaid current and undisputed charges, which reflect as unpaid on the municipality's systems.

Conclusion

It is imperative that consumers understand and know their right in relation to disconnections and threats of disconnections made by the municipalities in respect of purported arrears in relation to municipal accounts. This simple knowledge may be sufficient to assist you in avoiding what could be a very unpleasant, time consuming, and costly exercise, when having to deal with an illegal disconnection for your electricity or water supply.

ABOUT THE AUTHOR

Chantelle Gladwin is a Partner and Rogan Heale, a candidate attorney, at Schindler's Attorneys.

For more, visit: <https://www.bizcommunity.com>