

Rental Amendment Act will help eradicate blurred lines

While the looming implementation of the Rental Housing Amendment Act has sparked considerable concern, many property professionals believe that there is little or no cause for panic as long as all parties are well-informed and compliant - and that the amendments could, in fact, have a positive impact on the market and encourage rather than deter investors.



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Lorraine Dellbridge, rental specialist in the Southern Suburbs for Lew Geffen Sotheby's International Realty, says: "The new Act actually highlights and remedies a number of practical and statutory weaknesses in the current act and the proposed changes will eradicate any existing blurred lines, making it easier for landlords and tenants to comply.

"Fundamentally, the law remains the same but there are significant amendments to the statutory rights and obligations of landlords and tenants and rules relating to stipulations in a lease, however, these points are already in place in the existing leases of most reputable agencies.

"Factors that landlords are going to have to look out for include ensuring that all lease agreements are in writing with clear definitions and guidelines and that properties are habitable in accordance with the Rental Housing Act or they could find themselves incurring fines and also face possible imprisonment.

"It's therefore essential that both parties understand their rights and obligations and familiarise themselves with the new Act," she says, adding, "It is also more important than ever that landlords appoint an experienced agent from an established and reputable agency to manage the property and fight in their corner if necessary."

Clearer definition of the law

Debra Levin and Lisa Hendricks, partner area specialists on the Atlantic Seaboard for the group believe that legislation has been moving in this direction for a while and that many will welcome a clearer definition of the law.

"As much as these new regulations don't seem to favour property buyers, the fact that laws are being further defined is probably an advantage in the mind of buyers who now have a clearer cut idea as to what is expected within their relationships with their tenants.

“Foreign buyers, especially, prefer legislation to be laid out up front. It is therefore important for current landlords to follow due process as this bodes well for buyers taking over existing leases and being assured of having well-regulated contracts place going forward.”

They add that with Cape Town recently having been voted the top tourist destination for the sixth year in a row, foreign property investment on this exclusive coastal strip is once again picking up and a more streamlined process for rental management can only boost these sales.

Craig Guthrie, partner at Guthrie Colananni Attorneys, explains the main changes to the act and takes a closer look at several of the proposed amendments and their implications for landlords and tenants.

“As it stands, the rights of tenants in the residential property sector are protected by the Rental Housing Act, the common law, and the Consumer Protection Act, however the proposed Amendment Act creates new offences which are punishable by law and landlords now face the possibility of a fine or even imprisonment.”

These infringements include:

- Not issuing a written rental agreement - this is a positive development in South African law as it creates more legal certainty for both parties and usually, due to a non-variation clause - cannot be amended orally or unilaterally. It affords the tenant security of tenure, while affording the landlord proof of an existing agreement, which can be enforced in court;
- Failure to provide a habitable dwelling - a ‘habitable’ condition refers to a dwelling being safe and suitable for living, with adequate space, protection from the elements and the supply of necessary utilities;
- Failure to maintain the property - landlords must maintain building structures and ensure that their rental properties have proper access to basic services;
- Failure to repay the deposit and accrued interest - the responsibility of arranging a joint inspection of the property with the tenant will fall on the landlord. A list of defects to the property must be attached as an annexure to the lease agreement and if a joint inspection is not done at the commencement of the lease, the landlord will not be allowed to withhold a portion of the tenant’s deposit for repairs or damage. Deposits, together with the interest earned, must be paid out to tenants within seven days of the expiration of the lease, subject to deductions for damages;
- Cutting utilities – only the municipality may cut services for non-payment;
- Locking the tenant out of the property – you may not keep a tenant from entering the property without a court order.

Guthrie strongly urges both landlords and tenants to familiarise themselves with the act as there are a number of clauses that could easily trip up both parties: “For instance, Section 4A (9) expressly prohibits subletting of the leased premises, without the consent of the landlord.

“And in this Airbnb day and age, together with the strict requirements of service on each occupant for eviction proceedings it is imperative for the landlord to know at any given time who is occupying the leased premises.”

Dellbridge concludes: “Although no firm date has been set for the amended act to come into operation, landlords and tenants will be required to comply with the new requirements within six months from the date of commencement.

“And in this case knowledge definitely is power and it’s not too soon to begin familiarising oneself with the act and note the important changes. In fact, landlords should embrace it – it will eradicate much frustration and will also help weed out tenants who take advantage and work the current system.”