

RENTAL DEPOSITS & DAMAGES

How to Avoid the Avoidable Disputes

presented by **ShaunLuyt** 
Your Partner in the "Business" of Residential Property Rentals

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Overview

- The Rental Housing Act & Damages
- The Tenant's Right to Repair Damages
- The Landlord's Right to Repair Damages
- Damages vs Fair Wear & Tear
- Best Practice Exit Procedure
- How to Deal with Unavoidable Disputes

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Rental Deposits & Damages

The Rental Housing Act & Damages

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The Rental Housing Act

CHAPTER 3

RELATIONS BETWEEN TENANTS AND LANDLORDS

General provisions

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The Rental Housing Act

• Section 4

(3) The landlord's rights against the tenant include his or her right to—

- (a) prompt and regular payment of a rental or any charges that may be payable in terms of a lease;
- (b) recover unpaid rental or any other amount that is due and payable after obtaining a ruling by the Tribunal or an order of a court of law;
- (c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;

(d) on termination of a lease to—

- (i) receive the rental housing property in a good state of repair, save for fair wear and tear; and
- (ii) repossess rental housing property having first obtained an order of court; and

(e) claim compensation for damage to the rental housing property or any other improvements on the land on which the dwelling is situated, if any, caused by the tenant, a member of the tenant's household or a visitor of the tenant.

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The Rental Housing Act

Provisions pertaining to leases

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The Rental Housing Act

• Section 5

- (e) the tenant and the landlord must jointly, before the tenant moves into the dwelling, inspect the dwelling to ascertain the existence or not of any defects or damage therein with a view to determining the landlord's responsibility for rectifying any defects or damage or with a view to registering such defects or damage, as provided for in subsection (7):
- (7) A list of defects registered "in terms of subsection (3)(e) must be attached as an annexure to the lease as contemplated in subsection (2).

A defects list is NOT sufficient!

You need compile a comprehensive STATE OF THE PROPERTY REPORT!

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The Rental Housing Act

• Section 5

- (f) at the expiration of the lease the landlord and tenant must arrange a joint inspection of the dwelling at a mutually convenient time to take place within a period of three days prior to such expiration with a view to ascertaining if there was any damage caused to the dwelling during the tenant's occupation thereof:

End of Lease = Property Given Back to the Owner
i.e. KEY HANDOVER

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The Rental Housing Act

• Section 5

- (g) on the expiration of the lease the landlord may apply such deposit and interest towards the payment of all amounts for which the tenant is liable under the said lease, including the reasonable cost of repairing damage to the dwelling during the lease period and the cost of replacing lost keys and the balance of the deposit and interest, if any, must then be refunded to the tenant by the landlord not later than 14 days of restoration of the dwelling to the landlord:

After End of Lease . . .

The Landlord MAY repair the damage
NO Tenant agreement required
the only qualification is 'reasonable cost'

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The Rental Housing Act

• Section 5

- (k) should the tenant fail to respond to the landlords request for an inspection as contemplated in paragraph (f), the landlord must on expiration of the lease inspect the dwelling within seven days from such expiration in order to assess any damages or loss which occurred during the tenancy:

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The Rental Housing Act

• Section 5

- (l) the landlord may in the circumstances contemplated in paragraph (k), without detracting from any other right or remedy of the landlord, deduct from the tenant's deposit and interest the reasonable cost of repairing damaged to the dwelling and the cost of replacing lost keys;

Tenant doesn't attend inspection

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The Landlord MAY repair the damage
NO Tenant agreement required
the only qualification is 'reasonable cost'

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The Rental Housing Act

• Section 5

- (m) the balance of the deposit and interest, if any, after deduction of the amounts contemplated in paragraph (l), must be refunded to the tenant by the landlord not later than 21 days after expiration of the lease:

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The Rental Housing Act

• Section 5

- (n) the relevant receipts which indicate the costs which the landlord incurred, as contemplated in paragraph (l), must be available to the tenant for inspection as proof of such costs incurred by the landlord; and

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The Rental Housing Act

• Section 15

15. (1) The MEC may, after consultation with the relevant standing or portfolio committee of the Provincial Legislature responsible for housing matters in the province, by notice in the *Gazette*, make regulations relating to—

THE MEC MAY proclaim Provincial Regulations

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The Rental Housing Act

**THE MEC MAY proclaim Provincial Regulations
with respect to UNFAIR PRACTICES**

• Section 15

- (f) unfair practices, which, amongst other things may relate to—
- (i) the changing of locks;
 - (ii) deposits; **g**
 - (iii) damage to property;
 - (iv) demolitions and conversions;
 - (v) eviction;
 - (vi) forced entry and obstruction of entry;
 - (vii) House Rules, subject to the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), where applicable;
 - (viii) intimidation;
 - (ix) issuing of receipts;
 - (x) tenants committees;

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Rental Deposits & Damages

The Tenant's Right to Repair Damages

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The Tenant's Right to Repair Damages

- Summary of the RHA re damages

At / after expiration of the lease
the landlord
MAY deduct
from the tenant's deposit & interest
the reasonable cost
of loss
of repairing damage to the premises
that occurred during the lease
BUT
receipts MUST be available to the tenant for inspection

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The Tenant's Right to Repair Damages

- When does the Tenant have the right to repair damages?

BEFORE the expiration of the lease

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The Tenant's Right to Repair Damages

- MOST DISPUTES ARE AS A RESULT OF MIS- / NON-COMMUNICATION
 - Communicate clearly with the Tenant with respect to their rights

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The Tenant's Right to Repair Damages

- How will the Tenant have any idea of what are deemed 'Damages' vs 'Fair Wear & Tear'?
 - Tell them . . .
 - How?
 - Pre-Exit Inspection

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The Tenant's Right to Repair Damages

- Tenant Communication
 - TO48 – The Exit Process & Inspections

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Rental Deposits & Damages

The Landlord's Right to Repair Damages

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The Landlord's Right to Repair Damages

• RHA Section 4

(3) The landlord's rights against the tenant include his or her right to—

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- (c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;
- (d) on termination of a lease to—
 - (i) receive the rental housing property in a good state of repair, save for fair wear and tear; and
 - (ii) repossess rental housing property having first obtained an order of court; and
- (e) claim compensation for damage to the rental housing property or any other improvements on the land on which the dwelling is situated, if any, caused by the tenant, a member of the tenant's household or a visitor of the tenant.

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The Landlord's Right to Repair Damages

• Damages that can be claimed

- NOT fair wear & tear
- Caused by the tenant, a member of the tenant's household or a visitor of the tenant
- 'Defects list' must be attached to the lease
 - i.e. Incoming Inspection Report
- Joint Exit Inspection was arranged at a mutually convenient time, and within 3 days prior to the end of the lease, and Exit Inspection was done
- The cost of the repairs claimed must be 'reasonable'
- The landlord must be able to provide the Tenant with RECEIPTS for the costs deducted

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The Landlord's Right to Repair Damages

- The burden of proof is on the Landlord

HOW do you prove Damages?

COMPARE Exit Inspection vs Entry Inspection Reports

A defects list is NOT sufficient!

You need compile a comprehensive STATE OF THE PROPERTY REPORT!

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The Landlord's Right to Repair Damages

- How to you prove 'reasonable cost'?

Comparative Quotes

DO NOT have to use the cheapest

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The Landlord's Right to Repair Damages

- What if the Landlord doesn't attend the Exit Inspection and points out damages later?
- MOST DISPUTES ARE AS A RESULT OF MIS- / NON-COMMUNICATION
 - Communicate clearly with the Landlord with respect to their rights
- Landlord Communication
 - L050 – The Exit Process & Inspections

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The Landlord's Right to Repair Damages

L050 – The Exit Process & Inspections

If you would like to be at this exit inspection, please let me know so I can arrange that. This is the final opportunity to document any issues at the property. If you would like input in this report then it's important that we arrange for you to also be at the inspection as any issues discovered after the final inspection cannot be included in any claim.

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Damages vs Fair Wear & Tear

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Damages vs Fair Wear & Tear

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Rental Deposits & Damages

Best Practice Exit Procedure

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Best Practice Exit Procedure

- PC010 – Checklist – Vacating the Property

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How to Deal with Unavoidable Disputes

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How to Deal with the Unavoidable Disputes

- Try and negotiate a mutually agreeable resolution
- If not possible
 - Proceed with repairs
 - Advise Tenant to approach Tribunal, etc

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RentPack

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