

EARLY LEASE CANCELLATION

How To Protect Your Landlords
Right to a Cancellation Penalty!

presented by

ShaunLuyt

Your Partner in the "Business" of Residential Property Rentals



The Property Practitioners Act & Rental Professionals

Disclaimer

Disclaimer

I am not a lawyer and I cannot provide legal advice.

Nothing in this presentation is not to be considered anything other than general information share for purely informational purposes.

Nothing in this presentation is to be deemed to be, or to be relied upon as, legal advice of any kind.

Please seek legal advice if you have any specific questions.

Overview

- The Tenant's Right to Terminate their Lease Early
- The Landlords Right to a Cancellation Penalty
- Actions the Agent / Landlord Need to take to Ensure the Landlord/s Right is not Jeopardised
- What I've Learned from My Experience in Early Termination Penalty Disputes

Early Cancellation of Lease ito CPA

The Tenant's Right to
Terminate their Lease Early

When Does the CPA Apply?

- Consumer Protection Act

Landlord
(Supplier)

- Natural Person
- Juristic Entity



Tenant
(Consumer)

- Natural Person
- Juristic Entity
 - < R2m
 - ≥ R2m

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CPA Sec. 5(2)(b)

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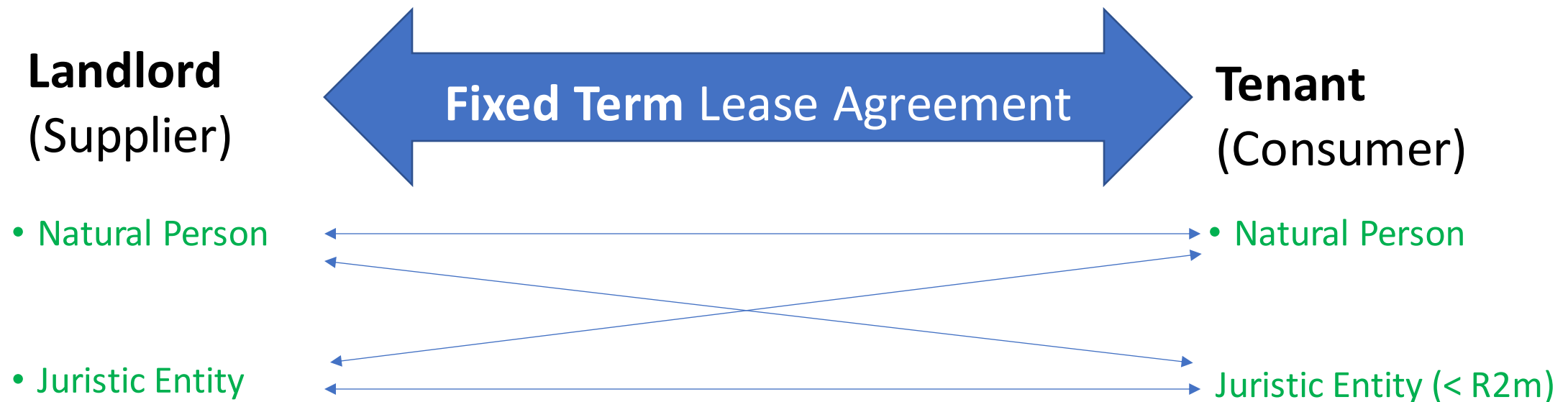


Tenant
(Consumer)

- Natural Person
- Juristic Entity (< R2m)

When Does Section 14 of the CPA Apply?

- Consumer Protection Act
 - Section 14: Expiry & Renewal of **Fixed Term** Agreements



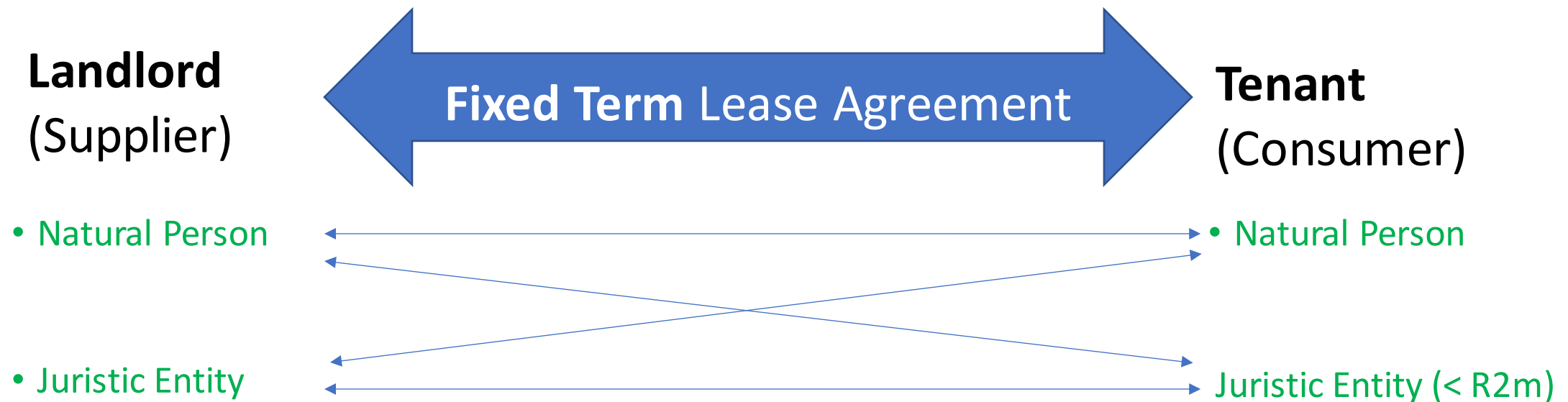
When Does it Apply

- Consumer Protection Act
 - Section 14: Expiry & Renewal of Fixed Term Agreements

14. (1) This section **does not apply to transactions between juristic persons** regardless of their annual turnover or asset value.

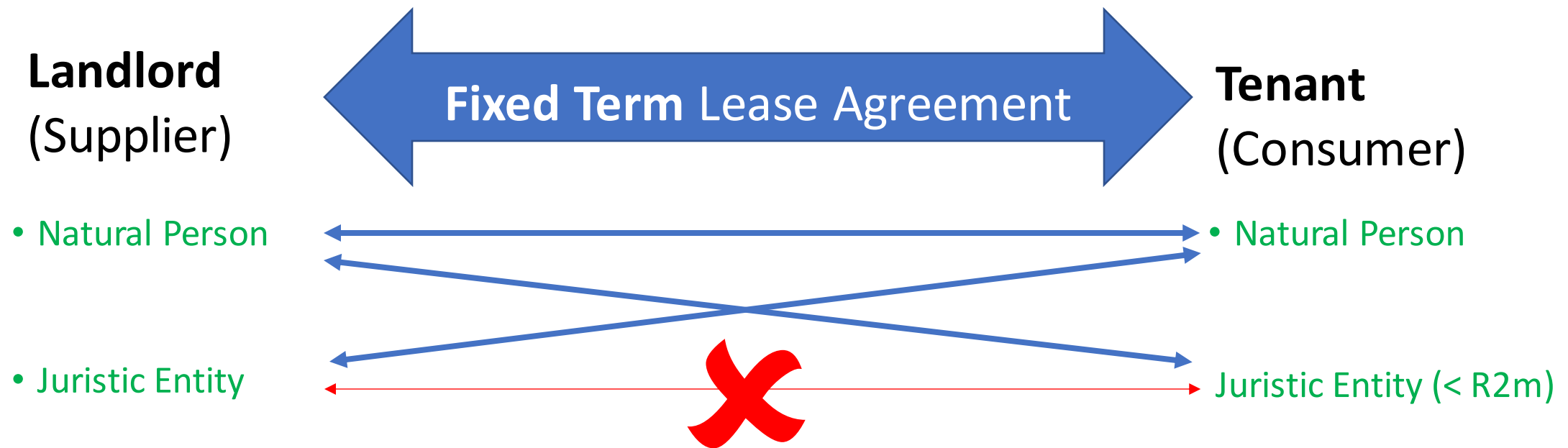
When Does Section 14 of the CPA Apply?

- Consumer Protection Act
 - Section 14: Expiry & Renewal of Fixed Term Agreements



When Does it Apply

- Consumer Protection Act
 - Section 14: Expiry & Renewal of Fixed Term Agreements



CheatSheet

Early Cancellation of Lease ito CPA

CPA Section 14

What does s14 say about early cancellation?

14. (1) This section does not apply to transactions between juristic persons regardless of their annual turnover or asset value.

(2) If a consumer agreement is for a fixed term—

(a) that term must not exceed the maximum period, if any, prescribed in terms of subsection (4) with respect to that category of consumer agreement;

(b) despite any provision of the consumer agreement to the contrary—

(i) the consumer may cancel that agreement—

(aa) upon the expiry of its fixed term, without penalty or charge, but subject to subsection (3)(a); or

(bb) at any other time, by giving the supplier 20 business days' notice in writing or other recorded manner and form, subject to subsection (3)(a) and (b); or

(ii) the supplier may cancel the agreement 20 business days after giving written notice to the consumer of a material failure by the consumer to comply with the agreement, unless the consumer has rectified the failure within that time;

Consumer Protection Act – Section 14

(3) Upon cancellation of a consumer agreement as contemplated in subsection (1)(b)—

(a) the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and

- Rent & other amounts due

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Consumer Protection Act – Section 14

(3) Upon cancellation of a consumer agreement as contemplated in subsection (1)(b)—

(a) the consumer remains liable to the supplier for any amounts owed to the supplier in terms of that agreement up to the date of cancellation; and

(b) the supplier— **i.e. Landlord**

(i) may impose a reasonable cancellation penalty with respect to any goods supplied, services provided, or discounts granted, to the consumer in contemplation of the agreement enduring for its intended fixed term, if any; and **i.e. Tenant**

(ii) must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation, **e.g. rent already paid for a period beyond the date of cancellation**
as prescribed in terms of subsection (4).

Consumer Protection Act – Section 14

- (4) The Minister may, by notice in the *Gazette*, prescribe—
- (a) the maximum duration for fixed-term consumer agreements, generally, or for specified categories of such agreements;
 - (b) the manner and form of providing notices to the consumer in terms of subsection (2)(c);
 - (c) the manner, form and basis for determining the reasonableness of credits and charges contemplated in subsection (3); and
 - (d) other incidental matters as required to provide for the proper administration of this section.

Consumer Protection Act Regulations

Consumer Protection Act – Section 14

Summary

- Where a tenant & landlord are in a **fixed term lease**, and
- The tenant is not a Juristic Entity with assets or annual turnover > R 2million, and
- The tenant and the landlord are not both juristic entities
- Then:
 - The **tenant can cancel the lease at any time** during the fixed term lease period
 - By giving the landlord **20 business days notice** of cancellation

Consumer Protection Act – Section 14

- The **tenant remains responsible** for all amounts due up to the date of cancellation
- Any amounts paid in advance of the date of cancellation must be credited to the tenant's account
- The Landlord **MAY** charge a cancellation penalty

Early Cancellation of Lease ito CPA

The Landlords Right to a
Cancellation Penalty

The Landlord's Right to a Cancellation Penalty

- The Landlord MAY charge a cancellation penalty when the tenant cancels the lease legally in terms of Section 14 of the CPA
- *CheatSheet – CPA S 14*
- *CheatSheet – Validate Notice of Early Cancellation of Fixed Term Lease*

The Landlord's Right to a Cancellation Penalty

- Conditions Attached
 - *CPA Regulations*
- Landlord MUST take steps to to mitigate their loss
 - Re-advertise the property ASAP
 - Advertise on the same terms & conditions
 - Specifically rental amount
- NOT taking the above actions ASAP can jeopardise the Landlord's entitlement to a cancellation penalty, or the amount they are entitled to

The Landlord's Right to a Cancellation Penalty

- Amount/s landlord/s are entitled to claim as cancellation penalty
- Accepted to be 'out-of pocket' expenses / losses
 - Loss of rent
 - Advertising costs
 - Etc
- Cancellation penalty not intended to 'enrich' the landlord

Early Cancellation of Lease into CPA

Actions the Agent / Landlord
Need to take

Actions the Agent / Landlord Need to Take

- Advertise the property asap
- At the same terms and conditions of the current lease
 - Rental amount
 - Same lease period

Early Cancellation of Lease ito CPA

Common Misunderstandings

Common Misunderstandings

- Minimum cancellation penalty?
- Maximum cancellation penalty?
- Cancellation Admin Fee?

Early Cancellation of Lease ito CPA

Calculating & Billing the Cancellation Penalty



Calculating & Billing the Cancellation Penalty

An Example: June 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17 EC Notice	18 BD1	19 BD2	20	21
22 BD3	23 BD4	24 BD5	25 BD6	26 BD7	27	28
29 BD8	30 BD9					

EC = Early Cancellation / BD = Business Day

Calculating & Billing the Cancellation Penalty

June / July 2020

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
29 BD8	30 BD9	1 BD10	2 BD11	3 BD12	4	5
6 BD13	7 BD14	8 BD15	9 BD16	10 BD17	11	12
13 BD18	14 BD19	15 BD20 DOC	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

EC = Early Cancellation / BD = Business Day / DOC = Date of Cancellation

Calculating & Billing the Cancellation Penalty

- Rent & other payments due under the lease may only be billed up to the *Date of Cancellation*
 - Reverse any rent billing post-DOC
 - Ensure not billing for rent, etc after DOC
- Diarise to bill *Cancellation Penalty* if need be
- Once property is confirmed re-tenanted, finalise deposit refund

EC = Early Cancellation / BD = Business Day

Early Cancellation of Lease ito CPA

PC007 - SOP

PC007 - SOP

Early Cancellation of Lease ito CPA

Rental Training Club