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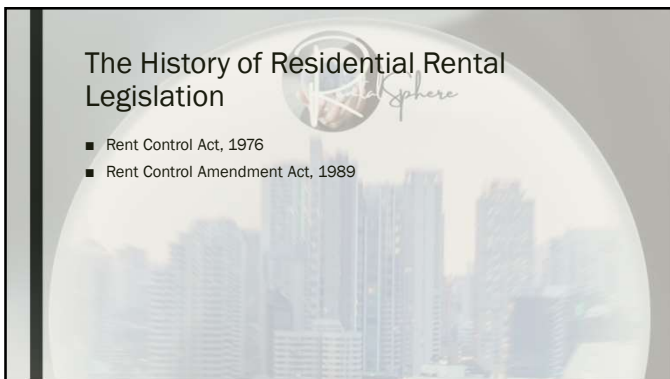
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The History of Residential Rental Legislation

- Rent Control Act, 1976
- Rent Control Amendment Act, 1989
- Rental Housing Act, 1999
- Rental Housing Amendment Act, 2007
- Rental Housing Amendment Act 35 of 2014

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THE PURPOSE OF THE ACT

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The Purpose of the Act

- define the responsibility of Government in respect of rental housing property;
- to make provision for the establishment of **Rental Housing Tribunals**;
- to define the functions, powers and duties of such Tribunals;
- to lay down **general principles governing conflict resolution** in the rental housing sector;
- to provide for the facilitation of **sound relations between tenants and landlords** and for this purpose to **lay down general requirements relating to leases**;

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The Purpose of the Act

- to repeal the Rent Control Act, 1976;
- and to provide for matters connected therewith.



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RHA-RELATED REGULATIONS

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WHAT ARE REGULATIONS?

- Most Acts have associated regulations
- Usually the Act will task the appropriate national Minister to develop regulations to give practical effect to the requirements of the Act

- The Act = the 'skeleton' and the regulations = 'the meat on the bones'
- OR
- The Act say WHAT must be done and the Regs say HOW



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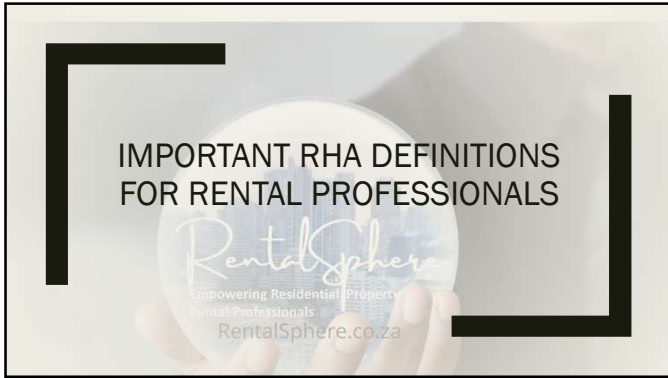
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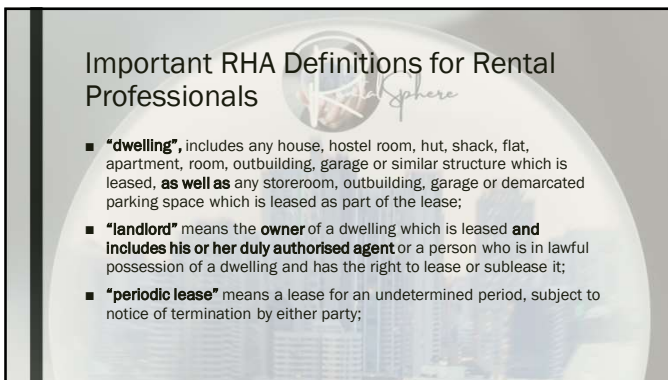
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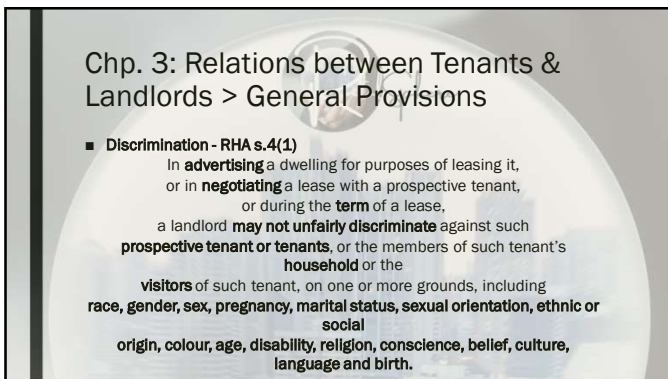
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Chp. 3: Relations between Tenants & Landlords > General Provisions

- **Tenant's Rights - RHA s.4(2)-4(4)**
 - Right to **privacy**
 - Right **not to have**
 - his or her person or **home searched**
 - his or her **property searched**
 - his or her **possessions seized**, except in terms of a law of general application and having first obtained a ruling by a Tribunal or an order of court.
 - the **privacy of his or her communications infringed**

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Chp. 3: Relations between Tenants & Landlords > General Provisions

- **Landlord's Rights - RHA s.4(5)/contd.**
- Right to:
 - **prompt and regular payment** of a rental or any charges that may be payable in terms of a lease
 - **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
 - **terminate the lease** in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;

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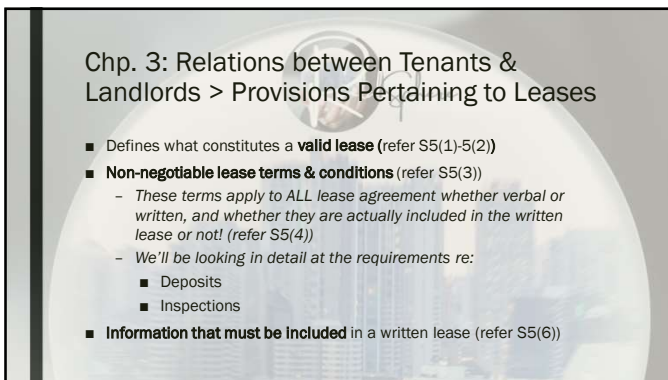
Chp. 3: Relations between Tenants & Landlords > General Provisions

- **Landlord's Rights - RHA s.4(5)/contd.**
- Right to:
 - **on termination** of a lease to—
 - **receive the rental housing property in a good state of repair**, save for fair wear and tear; and
 - **repossess rental housing property** having first obtained an order of court; and
 - **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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Deposits




- the landlord **may require** a tenant, **before moving into** the dwelling, to **pay a deposit** which, at the time, **may not exceed** an amount equivalent to an **amount specified in the agreement** or otherwise agreed to between the parties

RHA S 5(3)(c)

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Deposits




- the **deposit** contemplated in paragraph (c) **must be invested** by the landlord **in an interest-bearing account with a financial institution** and the **landlord must** subject to paragraph (g) **pay the tenant** such **interest** at the rate applicable to such account which may **not be less than the rate applicable to a savings account** with that financial institution, and the **tenant may** during the period of the lease **request** the landlord to provide him or her with **written proof in respect of interest accrued** on such deposit, and the **landlord must provide such proof on request**: Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act;

RHA S 5(3)(d)

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Deposits



- 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

RHA S 5(3)(g)

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Deposits




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

RHA S 5(3)(h)

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Deposits



- should **no amounts be due and owing** to the landlord in terms of the lease, the deposit, together with the accrued interest in respect thereof, must be refunded by the landlord to the tenant, without any deduction or set-off, **within seven days of expiration of the lease**;

RHA S 5(3)(i)

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INSPECTIONS

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The Ingoing Inspection

- 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);

RHA S 5(3)(e)

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Interim Inspections

- A **tenant** has the **right, during the lease period, to privacy**, and the **landlord** may only exercise his or her **right of inspection** in a reasonable manner **after reasonable notice** to the tenant.

RHA S 5(4)(2)

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The Outgoing Inspection

- 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;

RHA S 5(3)(f)

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Importance of Ingoing & Outgoing Inspections

- **failure by the landlord to inspect the dwelling in the presence of the tenant** as contemplated in paragraphs (e) or (f) is **deemed** to be an **acknowledgement by the landlord** that the **dwelling is in a good and proper state of repair**, and the **landlord will have no further claim** against the tenant who must then be refunded, in terms of this subsection, the full deposit plus interest by the landlord;

RHA S 5(3)(j)

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What Happens if the Tenant Doesn't Attend the Exit Inspection?

- should the **tenant fail to respond** to the landlord's **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;

RHA S 5(3)(k)

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What Happens if the Tenant Doesn't Attend the Exit Inspection?

- 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 damage** to the dwelling and the cost of replacing lost keys;
- the **balance** of the deposit and interest, if any, after deduction of the amounts contemplated in paragraph (1), **must be refunded** to the tenant by the landlord **not later than 21 days after expiration** of the lease;

RHA S 5(3)(l&m)

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What Happens if the Tenant Doesn't Attend the Exit Inspection?

- 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;

RHA S 5(3)(n)

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DOES A LEASE HAVE TO BE IN WRITING?

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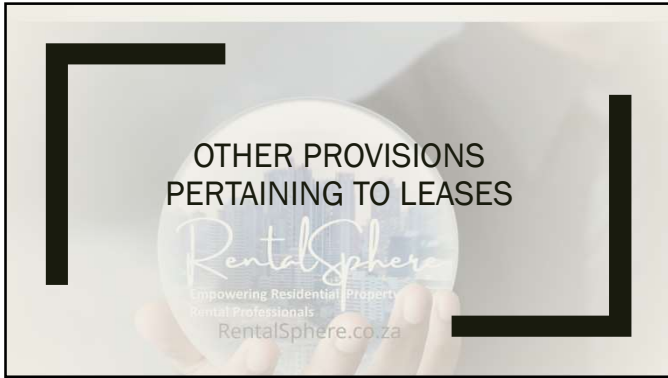
Does a lease have to be in writing?

(1) A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act 18 of 1969).

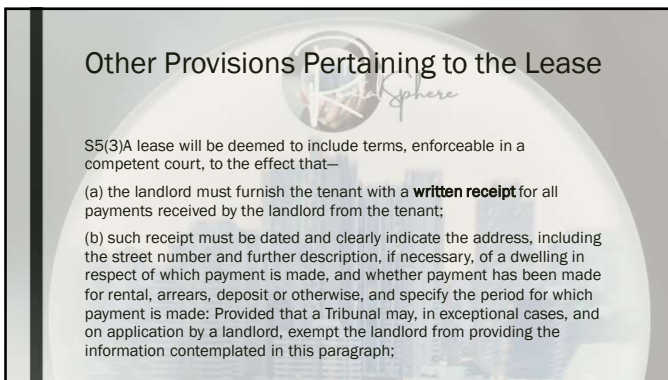
Is there any exception to this rule? If so, what is it?

(2) A landlord must, if requested thereto by a tenant, reduce the lease to writing.

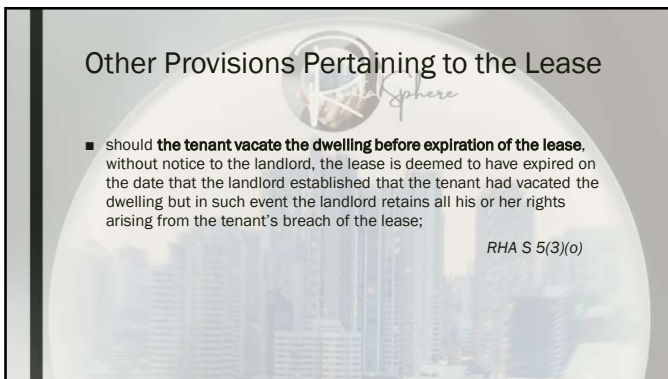
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Other Provisions Pertaining to the Lease

- any **costs in relation to contract of lease** shall only be payable by the tenant upon proof of factual expenditure by the landlord.

RHA S 5(3)(p)

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Other Provisions Pertaining to the Lease

- S5(4) The standard provisions referred to in subsection (3) **may not be waived by the tenant or the landlord.**
- S5 (5) If on the **expiration of the lease** the **tenant remains in the dwelling with the express or tacit consent of the landlord**, the parties are deemed, in the absence of a further written lease, to have entered into **a periodic lease, on the same terms and conditions as the expired lease**, except that at least one month's written notice must be given of the intention by either party to terminate the lease.

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Other Provisions Pertaining to the Lease

- S5(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).
- (8) A **copy of any House Rules** applicable to a dwelling must be attached as an annexure to the lease.

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Tribunal Hearings

- RHT can summon any LL, T or other person to attend hearing
- The Tribunal has a list of factors that must be taken into account when ruling
- Refer S13(4)-(6)
- Once a complaint has been lodged:
 - LL may not evict T
 - T must continue to pay rental
 - LL must effect necessary maintenance

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Jurisdiction of the RHT

- Essentially matter pertaining to the RHA
- Tribunal may
 - Issue *spoliation and attachment orders and grant interdicts*
- No one is obliged to use the Tribunal – can use alternatives, e.g. small claims court and magistrates court

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Tribunal Rulings

- S13(13) A **ruling by the Tribunal** is deemed to be an **order of a magistrate's court** in terms of the Magistrates' Courts Act, 1944 (Act 32 of 1944), and is enforced in terms of that Act.
- How can an order of the Tribunal be appealed??
- S13(14) The Tribunal **does not have jurisdiction to hear applications for eviction orders.**

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OTHER TRAINING SERVICES

- Online Courses
 - [RentalSphere.co.za](https://rentalsphere.co.za)
- Rental Training Club
 - 10/10 - *Mould in Rental Properties* w/ *Marisia Robus*
 - 24/10 - *Sureties / Guarantees / Co-Signatories* w/ *Bruno Simão*
 - [RentalSphere.co.za/RTC](https://rentalsphere.co.za/RTC)
- Rental Process Compliance Audits & Review
