

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #96

1. Legal Quotes

"A judge is a law student who marks his own examination papers." [H L Mencken]

"It is not what a lawyer tells me I may do; but what humanity, reason, and justice tell me I ought to do." [Edmund Burke]

"If Moses had gone to Harvard Law School and spent three years working on the Hill, he would have written the Ten Commandments with three exceptions and a saving clause." [Charles Morgan]

2. Legal short

My wife finally gave me a threesome. She and her divorce lawyer screwed me.

3. Inspiring quotes

"You cannot have a positive life and a negative mind." [Joyce Meyer]

"Never give in - never, never, never, never, in nothing great or small, large or petty, never give in except to convictions of honour and good sense." [Winston Churchill]

"Great achievement is usually born of great sacrifice, and is never the result of selfishness." [Napoleon Hill]

4. Maintenance of a property in a lease agreement – who is responsible?

Unless specifically excluded in the lease agreement, or the damage has been caused by the tenant's actions and/or negligence, the landlord is responsible to repair appliances (like fridges, TV's) or faulty alarms and electronic gates.

Section 5(3)(e) of the Rental Housing Act, Act 50 of 1999 is important in this regard and states as follows:

"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..."

This is one of the fundamentals of our landlord/tenant law. **The landlord is responsible**

1. to hand over the dwelling for occupation to the tenant in a reasonable condition ("a good state of repair"; "fit for the purpose for which it is let") that would allow the tenant undisturbed use and enjoyment, and

2. to maintain the property both internally and externally at all times.

Damage due to "fair wear and tear" (defined as "the deterioration or depreciation in the value of the subject matter by ordinary and reasonable use") is the responsibility of the landlord. In the absence of a contractual agreement as to maintenance (in the lease agreement), the tenant is only responsible for costs incurred due to his actions and/or negligence.

Look at your lease agreement carefully: the agreement may stipulate that the tenant is responsible to have things like blocked drains fixed, and to be responsible to replace light bulbs, fuses and tap washers. It may be worth getting an attorney or suitably experienced or qualified person to advise you before you sign your lease agreement.

A tenant is usually responsible for maintaining the garden and keeping it in a tidy state.

One of the tenant's obligations is to report any damage (to the agent/landlord) in and to the property. Failure by the tenant to advise the agent/landlord may result in the tenant being held responsible for further damage caused (which may have been avoided had the issue been dealt with timeously). Tenants are obliged to provide **reasonable access** to the agent/landlord for maintenance issues.

Should the landlord fail to effect necessary repairs to the premises after being requested by the tenant in writing to do so, our courts have found that the tenant may repair the item and deduct

the cost of same from rental due.

In this regard, the "reasonable man's" actions are paramount: was reasonable notice given to the landlord to fix the item and were the tenant's actions in having the item repaired reasonable in the circumstances? It follows that in the case of emergencies like a burst water pipe or geyser, in the absence of an immediate response by the landlord, the tenant may immediately have the issue resolved (and claim a deduction in the rental for the costs of repair).

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