



Owners' rights of entry to leased properties should be legally stipulated, attorney advises

Should a landlord wish to use his or her keys to inspect leased property, reasonable notice to the tenant must be given, says a Johannesburg attorney.

LEGALS WRITER

DO landlords and property-owners have the right to own keys and means of access to an apartment or house they are renting out – and to use it whenever they want to?

Roy Bregman, of Bregman Moodley Attorneys, says legally the landlord or owner is entitled to have a duplicate set of keys - provided he or she does not invade the privacy of the tenant and only uses the keys to enter leased property in a case of emergency.

“To avoid any doubt or potential conflict in this matter, it is wise that this provision be included in all lease agreements,” Bregman advises.

He says, in terms of the Rental Housing Act of 1999 (as amended) unlawful entries by the landlord are offences that may result in imprisonment of the landlord – “although highly un-

likely” - or a fine being imposed.

“The landlord should, in any event, among other stipulations, provide the tenant with a dwelling that is inhabitable or and should not fail to maintain the leased premises. But the landlord may not enter leased property without giving a tenant reasonable notice and then only to inspect the property, to make repairs to the property, to show a house or apartment to a prospective tenant, purchaser, or mortgagee - or his or her agent - or if the property has been abandoned, or after having obtained a court order.”

So, what happens in the case of situations of sudden emergency?

Bregman says a landlord may well need a set of keys so that he or she may be able to enter quickly in emergencies such as in the event of a fire, burst pipes or similar unforeseen problems. He or she may also need keys to enable

those authorised to read meters or to do repairs which are the landlord's responsibility.

“I would suggest that a landlord should hold a set of keys to carry out necessary repairs expeditiously with the permission of the tenant - or without permission in emergencies. It is not possible, surely, for a landlord to carry out the works ‘expeditiously’ if he or she does not hold a key.”

Bregman says an agreement or lease should contain a clause dealing with “Lessor's rights of entry and carrying out of works” that contains the rights of the landlord (or his or her agent) to enter the premises for inspection, to carry out necessary repairs, replacements, or other works, or to perform any other lawful function in the bona fide interests of the landlord or the tenant. The provisions should be that:

- The tenant's right to privacy will not be violated during the lease period;

- Should the landlord wish to inspect the property, reasonable notice to the tenant must be given;

- The landlord shall hold duplicate keys to enter the premises without notice only in the event of emergency – fire, burst pipes etc – and if the tenant is not available to obtain prior permission. The landlord must then handle the keys in a proper and responsible manner.

“Without such written permission to hold keys and enter the premises to deal with, say, a burst pipe, the landlord will have to exercise his or her discretion in good faith and in mutual interests. But without written permission, there is always the risk of ensuing legal arguments,” Bregman adds.

(Source: Roy Bregman, telephone 011 646 0335 or email roy@bmalaw.co.za)