

EARLY CANCELLATION OF A RESIDENTIAL LEASE AGREEMENT

With the implementation of the Consumer Protections Act 68 of 2008 (the “CPA”) a tenant, who is a natural person, is entitled to cancel a lease agreement at any time during the rental period by simply giving the landlord twenty business days notice. As a result landlords no longer have the security of a long term fixed rental income.

The CPA does not however leave the landlord without the option of remedial action. The CPA enables the landlord to reclaim from the tenant all monies owed up to the date of cancellation of the lease agreement, as well as a reasonable early cancellation fee. The question remains, what is seen as a reasonable cancellation fee?

The following factors need to be taken into consideration to determine the aforementioned:

Section 17 of the CPA makes provision for the early cancellation of all consumer’s advance reservations, bookings or orders (these terms are interpreted as to include rental agreements).

Section 17(3)(b) of the CPA provides that the landlord may impose a reasonable early cancellation penalty fee should the tenant opt to cancel the agreement before the term has expired.

Section 17(4) determines the factors to be considered in determining what a “reasonable” cancellation penalty fee would be. The factors to be considered are:

- the nature of the goods or services that were reserved or booked;
- the length of notice of cancellation provided to the landlord by the tenant;
- the reasonable potential for the landlord, acting diligently, to find an alternative tenant between the time of receiving the cancellation notice and the time of the cancelled reservation; and
- the general practice of the relevant industry.

Further to this, a landlord may not impose any cancellation fee if the tenant is unable to honour the agreement because of the death or hospitalisation of the person for whom, or for whose benefit the agreement was concluded.

SR Du Plessis
June 2018