

Buying a tenanted property

 By [Bruce Swain](#)

31 Oct 2017

What happens if you find your ideal home, but the current owner has leased the property?



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Generally buying a tenanted property isn't a problem – if the buyer bears in mind that old adage of 'huur gaat voor koop'. Essentially common law dictates that a tenant's lease takes precedence of a change of ownership through a property sale – so the new owners will need to take that into account.

A tenant's rights when you sell

If a tenant's lease agreement was signed before the sale of the rental property, their agreement will survive the sale, making the new owner their landlord until the term of the lease has run its course. Many buyers may not be prepared to step in to the role of landlord, with all of its inherent responsibilities and costs, and so need to think carefully before buying into this sort of situation.

That's not to say that buying a property with a tenant still in occupation is necessarily any more problematic than a normal sale. In some cases this works quite well as in instances when the lease expires on the same date as the transfer of the property goes through. However, in other cases it could mean that the new owners need to wait weeks or months before being able to take occupation.

In this case the buyers may well need to spend on accommodation for themselves and storage for their belongings, as well as taking on the responsibility for repairs at their new, tenanted home and the tenant's deposit (minus any costs for damages). They would also be responsible for the legal costs should they need to evict the tenant. It may be wise to vet the current tenant before agreeing to the sale in order to determine whether there may be issues with non-payment, damage to the property or, if the tenant refuses to vacate the property when the lease expires.

A buyer's recourse

Buyers have further options than carefully vetting the tenants themselves; which includes making provision in the sales agreement which stipulates that the seller is responsible for removing tenants. Added to this could be a clause that the seller pays an agreed amount of occupational rent until the tenants are eventually evicted. Though this might be a tough sell if the

sellers have other willing buyers. Another option would be to communicate with the tenants – ascertaining whether they are willing to leave when the lease expires, which is no guarantee that they will, but at least an indication of cooperation.

As with any property transaction, buyers need to do their homework and know what they're willing to negotiate on to make the purchase. If becoming a landlord, even if only for a month, is a deal breaker, then it's best to look for another property. It's also useful to consult an attorney before signing an offer to purchase.

ABOUT BRUCE SWAIN

Bruce Swain is the CEO of Leapfrog Property Group.

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