

Legal aspects of renting out a property should be incorporated into lease

While many landlords use a “standard lease” when signing a rental agreement with their tenants, it should be noted that there are various legal aspects of renting out a property that might not be included in such a lease, says Michael Bauer, managing director of estate agency SAProperty.com.



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In the past few years, the Rental Housing Act (RHA) and Consumer Protection Act (CPA) have made a considerable impact on consumer rights and on certain clauses within a residential rental lease - clauses regarding notice period of cancellation or annual rental increases should definitely be checked in case they are outdated or unlawful, he says.

Any lease drawn up should have terms acceptable to both the landlord and tenant and both parties must be able to understand easily what their rights and responsibilities are.

Lease renewal, rentals increases

One of the issues that sometimes arises, says Bauer, is that of lease renewal and yearly increases in rentals. Most leases in the past included a standard 10% year-on-year increase and most tenants nowadays would want to negotiate that percentage. In addition, the CPA prohibits “contracting out of law”, which implies that when a lease is signed at a certain rental for a specified period of time, that is the rate that applies for that time. The new rate must be negotiated.

Tenants with a good track record of looking after a property and paying on time are at an advantage with their landlord, as they would most likely want to keep a good tenant at a lower increase in rent than have to look for a new tenant, says Bauer.

Cancellation of a lease

Another topic that is sometimes misunderstood is cancellation of a lease. A cancellation clause is now sometimes omitted from residential leases as the CPA allows a tenant to give 20 working days’ notice to cancel at any time should the need arise, and the landlord is able to charge a reasonable penalty to assist in recouping the costs and damages suffered by the landlord of a cancelled lease.

It is understandable that situations sometimes change, i.e. job transfers, relationship split-ups or job losses. Any situation is best dealt with by speaking openly and honestly to each other as to why the lease needs to be cancelled, so that the landlord does not feel aggrieved and the tenant can move on without having to pay too large a penalty. In most situations, one month's rent should be enough as a penalty for cancelling a lease, says Bauer.

Ultimately, any lease agreement drawn up should be in accordance with all the new regulations and both parties must be in agreement that they fully understand what they are signing for. This should ensure a good relationship between the landlord and tenant if interests are safeguarded and each person sticks to their responsibilities, says Bauer.

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