

Is the PIE Act applicable in the case of homestay rentals?

The recent [protest occupation of a Camps Bay guesthouse](#) in Cape Town has sparked serious concerns for short-term accommodation landlords in terms of their ability to evict a non-paying tenant. In this particular case, a group of people had booked a homestay via Airbnb and remained in occupation after the end of the agreed term.



Image source: Gallo/Getty

There were many discussions around whether the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act, 19 of 1998 (“PIE”) would apply to a case like this, whether there is an obligation on a landlord to provide safe accommodation for people in need, and, ultimately, whether homestay rentals are still a safe and profitable business option for property owners.

“When homestay entered the market, there was an explosion of interest from buyers keen to take advantage of the popularity of their short-stay rental model,” says Paul Stevens, CEO of Just Property.

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“Few envisaged a scenario where a tenant would take occupation in terms of the agreement concluded but then fail to vacate or even steal items from the premises. Sadly, many owners have subsequently discovered that this is not uncommon. Does this mean that there is no viability in the buy-to-rent market? Far from it. But landlords are encouraged to ensure they are adequately insured and know where they stand with regard to the law. When it comes to evictions, tenants have rights and so do landlords.”

PIE does not apply

Cilna Steyn of SSLR Inc. Attorneys, Notaries and Conveyancers notes: “When we talk about short-term rentals in the context of holiday or business-travel leasing, accommodation is being offered on the premise that the property will be occupied temporarily. The reason for the accommodation agreement is not to reside in the premises but to have a place to sleep and maybe eat for a specific period of time. Case law is very clear that the PIE will not apply in these cases.”

Steyn points to numerous cases that make reference to this, particularly Barnett and others vs The Minister of Land Affairs

and other 2007 (6) SA 313 (SCA). “In this case, Judge Brand took a very pragmatic approach to this question and simply stated that PIE can only find application when a person is being evicted from their ‘home’. Holiday accommodation or business-travel accommodation cannot be described as a ‘home’ but rather is temporary accommodation used by a person who has another true place of residence.”

Defining long-term rental

There is a common misconception regarding the phrase “long-term rental”, Steyn notes. “In terms of the law, a long-term rental is defined as a lease agreement with a term exceeding a period of 10 years. It is an agreement that will be governed by specific legislation and it has to be registered in the Deeds Office. This kind of registration creates a real right instead of the personal right that a normal lease agreement creates.”



Olina Steyn of SSLR Inc. Attorneys, Notaries and Conveyancers

When tenants are leasing a primary residence, this is neither a long-term rental as described above nor a short-term holiday/business-travel rental. The agreement is for a period of less than 10 years and the tenant uses the rental property as a place of residence. “In these cases, PIE is relevant and should a tenant in such a lease agreement have to be evicted, that eviction would have to be done in terms of the PIE,” says Steyn.

Full court process required

Landlords are very often reluctant to commence eviction proceedings when it comes to very short-term rentals. “Even though the process is slightly different and shortened because PIE does not apply, the eviction must still follow the full court process and such proceedings should start as soon as a tenant fails to pay or vacate,” Steyn advises.

Stevens continues, “For this reason, any landlord involved in such rentals should partner with a firm of attorneys that specialises in evictions, as well as with a respected and experienced managing agent who can assist with the day-to-day management and ensure that any problems are dealt with as quickly and effectively as possible.”

“As much as there are risks when it comes to short-term rentals, the same is true for normal rentals and long-term rentals, as well as for rentals of commercial, retail and industrial properties,” Steyn notes. All business carries risk and property leasing is no different.”

Screening process

Steyn says that issues arise when the screening process is neglected. “In the case of homestay-type rentals, there is often an assumption that credit ratings and past payment behaviour isn’t all that relevant because the person will only be in the premises for a short period of time. This couldn’t be further from the truth. In-depth tenant vetting is as important in a short-term rental as it would be in any other form of rental.”

Unfortunately, short-term rental agreements are often as simple as the click of a mouse on an app. Steyn’s advice is to conclude a full and in-depth lease agreement, despite the short duration of the stay. Short-term rental lease agreements can specifically exclude certain provisions of the Consumer Protection Act, as well as the PIE. “A detailed lease agreement secures both parties and it will make for a much more successful and stress-free transaction,” she says.

“Forewarned is forearmed,” says Stevens. “Many owners of homestays and holiday lets will be wondering if it’s worth it. It



Paul Stevens, CEO of Just Property

certainly is. Over time, such investments, when carefully chosen and managed, provide long-term income and value. Instead of panicking, make an effort to get the best legal advice you can afford, ask a professional letting agent for advice on vetting prospective 'guests'/tenants and have them look over your lease. Better still, appoint a good agent to manage your investment property for you.”

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