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Do month to month leases constitute fixed term leases? A brief look at the differences between the two and the law that applies to it.

by Chantelle Gladwin-Wood - Tue, Apr 30, 2019

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Introduction

This article looks at the differences between month to month leases and fixed term leases and the cancellation period required to cancel the agreements. We will explore the provisions of the Rental Housing Act 50 of 1999 (hereafter “RHA”), the Consumer Protection Act 86 of 2008 (hereafter “CPA”), Common Law and the High Court decision of *Makah v Magic Vending (Pty) Ltd*; *Ngolo v Magic Vending (Pty) Ltd* (A325/2016; A326/2016) [2017] ZAWCHC 142; 2018 (3) SA 241 (WCC) (16 May 2017).

Definition

In terms of the RHA, a month to month lease agreement occurs after a tenant’s fixed term lease expires, whereby the tenant does not vacate the premises and/or does not renew their fixed term lease with the landlord. This results in a month to month agreement commencing automatically. You can also agree with the tenant that you have a month to month lease upfront, verbally or in writing.

In contradiction, a fixed term lease agreement is an agreement entered into between a tenant and landlord stipulating the conditions and obligations of each party for a fixed period of time e.g. signing a lease agreement for the fixed period of one year.

The Applicable Legislation

RHA:

The RHA provides that in the event that a tenant does not vacate the property after their written lease agreement expires, that the lease will continue to run on the same terms and conditions as previously signed for. The tenant will pay to lease the property on a month to month basis, hence the term, month to month lease agreement. The question that arises is whether the tenant will have to give the same notice period when deciding whether to cancel the lease. According to the RHA, the tenant must give 1 months’

notice before cancelling the lease.

CPA:

Fixed term lease agreements fall under the protection of the CPA. Section 14(2) of the CPA deals with cancellation of fixed term agreements between consumers and suppliers. It states that the consumer may cancel the agreement once the fixed time period has expired, or at any other time, by giving the supplier 20 business days' notice in writing.

This is the same protection that is offered to a supplier, however there must also have been a material failure by the consumer to comply with the fixed term agreement before a supplier can cancel.

Relevant Case Law

In the case of *Makah v Magic Vending (Pty) Ltd; Ngolo v Magic Vending (Pty) Ltd* (A325/2016; A326/2016) [2017] ZAWCHC 142; 2018 (3) SA 241 (WCC) (16 May 2017), Makah ("the Appellant") entered into a month to month lease agreement with Magic Vending ("the Respondent"). When the Respondent stopped paying rent, the Appellant applied to evict the Respondent.

The question was whether the landlord was obligated to give 20 business days' notice of cancellation of the lease agreement when the agreement with the tenant was not actually a fixed agreement.

The CPA states that only once a tenant fails to rectify a breach within 20 days of receiving written notice from the landlord, may the agreement then be cancelled. It was argued that the tenant would have to comply with the relevant CPA section as enforcing a consumer agreement without complying with the CPA is void.

The court found that section 14(2) of the CPA does not apply to month to month lease agreements as they are not fixed term agreements. Interpreting the CPA as applying to the month to month agreements would result in extending protection to agreements not applicable to the Act.

The result is that a landlord need not comply with section 14(2) of the CPA before terminating a month to month lease agreement and that the landlord does not need to give the tenant 20 business days' notice to terminate the lease when a month to month agreement was entered into.

Conclusion:

Section 14(2) of the CPA is only applicable when dealing with a fixed term lease agreement. The landlord is hereby obligated to give 20 business days' written notice to the tenant that they are terminating their lease agreement. The reason for terminating must also be due to a material failure by the tenant, (eg. failure to pay rent on time.)

However, a month to month lease agreement is not considered a fixed term lease agreement and the notice period applicable is one month in terms of the RHA by either party, both ways without penalty.

On the opposite side of the spectrum, the tenant can also give 20 business days' notice for cancelling the agreement, for whatever reason, when a fixed term lease agreement has been entered into. On a month to month basis, no such notice period needs to be given.

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