PROPERTY LAW

Evictions

What is an eviction and when may a person be evicted from the property s/he is staying on? Read about the procedure that must be followed during evictions here.

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For all your eviction answers, follow our guide below:

1. What is an eviction?
2. When may a person be evicted from the property s/he is staying on?
3. What is the procedure that must be used to evict a person?
4. What is an unlawful occupier's rights during an eviction?
5. What will the court consider before granting an eviction order?
6. How can LegalWise assist you?

1. What is an eviction?

- An eviction occurs when a person is legally forced to leave the property s/he is staying on.
- The Constitution provides that no person's property may be taken away from him/her and that no person may be evicted from his/her home without a court order. This means that an owner or a person in charge of a property ("landlord"), must apply to court before evicting a person ("tenant") from his/her property.
- The procedure is provided for in the Prevention of Illegal Eviction from and Unlawful Occupation of Property Act ("PIE Act"). The specific procedure must be used when a landlord wants to evict a person using his/her property for housing purposes (for example, staying in his/her house, flat, room or similar structure).

2. When may a person be evicted from the property s/he is staying on?

- A person may be evicted from a property if s/he is considered to be an *unlawful occupier*.

- An unlawful occupier is a person who:
    - stays on a property without the consent of the landlord;
    - stays on a property without having any right in law to do so; or
    - is not considered to be an occupier in terms of any other law.

- When a landlord cancels or withdraws his/her consent previously given to an occupier to stay on his/her property, the occupier will then be considered to be unlawfully occupying the property.
- For example, an existing lease agreement between the landlord and the tenant will usually provide the tenant with a right to occupy the property. When the lease agreement expires or is cancelled by the landlord, as a result of the tenant's breach (such as not paying rent, damaging the property and so on), the tenant will be considered to be an unlawful occupier.
- Other examples of unlawful occupiers include: squatters, defaulting mortgagors and so on.

3. What is the procedure that must be used to evict a person?

It is important for a landlord to use the procedure provided for in the PIE Act, rather than taking the law into his/her own hands, for example, cutting the electricity and water supply to the property or intimidating the unlawful occupier, in the hope that s/he will vacate the property. Please obtain legal advice when dealing with an eviction.

- Step 1: the landlord must cancel or withdraw any right or consent given to the occupier before commencing with the eviction. The landlord must notify the occupier of such cancellation or withdrawal in writing and give the occupier reasonable time to vacate the property.
- Step 2: if the occupier remains on the property, despite due notice given to him/her, the landlord may approach the court to start with the eviction procedure (in the High Court or Magistrate's Court situated in the area of the occupied property). The court will provide the landlord with the date and time that it will hear the eviction application.
- Step 3: written notice of the eviction hearing must be personally served on the unlawful occupier/s of the property, as well as on the municipality situated in the area of the occupied property. This notice must be served by the sheriff at least 14 business days before the eviction hearing in court. The notice must indicate the date and time of the eviction hearing, the circumstances surrounding the eviction, and the unlawful occupier's right to defend him/herself.
- Step 4: both the landlord and unlawful occupier/s must be present at the court on the day of the eviction hearing. If the unlawful occupier/s fails to be present at the eviction hearing, the court

may postpone the hearing or proceed with it in his/her absence. This may lead to the court granting an eviction order.

4. What is an unlawful occupier’s rights during an eviction?

- S/he has the right to receive timeous notice of the eviction hearing (14 business days’ notice before the court date).
- S/he is entitled to appear before court and oppose the eviction with or without his/her legal practitioner (such as an attorney), s/he also has the right to apply for legal aid if they cannot afford to pay for a legal practitioner.

5. What will the court consider before granting an eviction order?

- The court will consider whether the occupier is in fact an *unlawful occupier* and whether the landlord has followed the procedure provided for in the PIE Act.
- If the unlawful occupier has been in occupation of the property for LESS than six months, the court will also consider the following:
    - all relevant circumstances, including the rights of the elderly, children, disabled persons and households headed by women; and
    - whether it will be just and equitable to grant an eviction order.
- If the unlawful occupier has been in occupation of the property for MORE than six months, the court will also consider the following:
    - all relevant circumstances including, the rights of the elderly, children, disabled persons and households headed by women;
    - whether alternative accommodation has been made available or can reasonably be made available by a municipality, organ of state or an owner of property, for the relocation of the unlawful occupier; and
    - whether it will be just and equitable to grant an eviction order.
- After considering the above and if the unlawful occupier/s has no valid defense, an eviction order may be granted by the court and will specify:
    - the date on which the unlawful occupier/s must vacate the property;
    - the date on which the sheriff must evict the unlawful occupier/s from the property, if s/he has not yet vacated the property on the date determined by court.

6. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or visit our join now page.

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