

Lockdown: what does it entail for me as landlord or tenant?

Did you recently find yourself in a position where your tenant has cancelled his lease agreement prior to the lockdown and agreed to vacate within the lockdown period? Or is your tenant in arrears and you want to evict him/her? Many questions arise as a result of this scenario which amongst others include two main questions:

1. Can I vacate the house and move during lockdown?
2. Can I evict tenants who failed to pay rent during the lockdown period?

The point of departure would first be to interpret the lockdown regulations and more specifically regulation 11B(1)(a)(i) which provides that, during the lockdown period every person is confined to his/her place of residence, unless movement is allowed for purposes of the regulations. In light of the clear position, the regulations will have to be interpreted restrictively - if there is any doubt, it would be safer to find yourself on the right side of the law.

Various of the definitions in the lockdown regulations need to be kept in mind for the rest of this discussion:

- a) "Lockdown" means the restriction of movement of persons during the lockdown period as defined above;
- b) "Lockdown period" means the period from 23h59 on 26 March 2020 until 23h59 on 16 April 2020;
- b) "Movement" means entering or leaving a place of residence.
- c) "Essential goods" means the following:
 - Food, which include food products, but excludes alcoholic beverages, and further includes animal food, chemicals, packaging and the like used in the production of food;
 - Cleaning and hygiene products, which include toilet paper, sanitary pads, condoms, hand sanitiser, disinfectants, soap, alcohol for industrial use, household cleaning products, and personal protective equipment;

- Medical products, which include medical and hospital supplies, equipment and personal protective equipment and chemicals, packaging and the like used in the production of these products;

- Fuel, which includes coal and gas; and

- Basic goods, which include airtime and electricity. It is important to note that basic goods have not been defined, and no definition could be seen in any other legislation or case law. A general definition would include those items used to satisfy human requirements that are needed in order to survive.

d) Under the lockdown regulations, a person will only be allowed to leave his/her place of residence, strictly in order to:

- Perform an essential service;
- Obtain an essential good or service;
- Collect a social grant;
- Seek emergency, life-saving, or chronic medical attention.

In a recent judgment in the Mpumalanga High Court, the court dismissed the Applicant's application to exempt him from the travel restrictions contained in the COVID-19 Regulations. The applicant sought an order to exempt him from the travel restrictions to visit his mother, who resides in another province. The applicant wanted to assist his mother with the funeral arrangements of his late grandfather.

It can reasonably be concluded that all tenants who were due to move at the end of March will now need to remain in place at least until after the nationwide lockdown, which currently ends at midnight on 16 April 2020.

On 24 March 2020, Chief Justice Mogoeng Mogoeng in terms of section 8(3) of the Superior Courts Act, 2013 delegated his powers to all Heads of Court to issue such Directives, as would enable access to court in relation to the following matters:

- Urgent matters;
- Bail applications;
- Maintenance and Domestic Violence matters; and
- Cases involving children

In light of the above, the landlord should be advised of the following:

a) It is doubtful whether the landlord will be able to convince a court that an eviction application for arrear rental is urgent. Should the landlord approach a court on an urgent basis, the landlord would probably run the risk of obtaining an adverse cost order against him/her.

b) In the event that the landlord or tenant provided the other party with notice to vacate the premises, it is best to wait out the lockdown period before taking any legal action against the tenant for either eviction proceedings or claiming for damages as a result of arrear rental.

However, the landlord can still electronically send a letter of demand or cancellation notice to the tenant during the lockdown period. Legal proceedings following such notice would however only commence after the lockdown has been lifted.