

CPA - LANDLORDS CLASSICAL QUESTIONS

Is it true that my tenant can in terms of the Consumer Protection Act (“CPA”) now cancel the lease by giving 20 business days’ notice, even if it is in the initial fixed term of the lease?

Yes, it is true that the tenant can now cancel the lease in the initial fixed term period by giving the landlord 20 business days notice in writing. In fact the lease can be cancelled by the tenant in this way during any period of the lease.

This is referred to in Section 14(2)(b)(bb) of the CPA which states that “the consumer may cancel the agreement by giving the supplier 20 business days notice in writing.”

If my tenant does cancel the lease with 20 days’ notice, what remedies do I have against the tenant?

If this occurs the tenant naturally remains liable to the landlord for all amounts owing in terms of the lease up to the date of cancellation.

Furthermore the landlord may impose a reasonable cancellation penalty upon the tenant.

The question arises as to how one determines a reasonable cancellation penalty.

If the tenant gives 20 business days notice of cancellation of the lease and this comes out on a day in the middle of the month, then the landlord should be able to claim the rental for the balance of the days for that month (the rationale being that the landlord can hardly rent out the premises for part of the month).

Should the landlord be unable to rent out the premises for the next month due to the fact that such premises require for example extensive advertising to find a new tenant and may have to be repaired, the landlord should be able to claim the following months rental.

The landlord may also be able to claim the new advertising costs as well as cleaning of the premises costs, which but for the tenants early cancellation of the lease, the landlord would not have had to incur.

Is it true that a lease cannot be entered into for a period of longer than 24 months?

This is true to a certain extent. Section 14(4) of the CPA provides that a lease cannot exceed the maximum period prescribed by the Minister, which is 24 months.

The regulations to the CPA however provide that a longer period is allowed if this is expressly agreed to between the landlord and the tenant and there is a demonstrable financial benefit to the tenant.