

EVICTIONS

Applicable Legislation

Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998 "PIE" applicable since the 30 August 2002 after the Supreme Court of Appeal handed down the judgment on the 30 August 2002 in the case of Ndlovu / Ngcobo; Bekker & Another / Jika (240/2001) [2002] ZASCA. Following the judgment the procedure as set out in the PIE Act has to be followed in evictions of defaulting tenants.

Procedure

1. Cancel the lease due to breach of non-payment or as per the relevant notice period as prescribed by the lease or one calendar months notice (from the 1st to the 30th/31st of the month) as per the common law if the lease is an oral lease for an indeterminate period.
2. Before the above 20 days has to be given in a letter of demand to rectify the non-payment according to the Consumer Protection Act.
3. An Ex Parte Application (an application without notice to any party) has to be brought before the Court for the Court to grant permission to initiate the procedure stipulated in the PIE Act.
4. Issue of Summons. The Summons can contain an automatic rent interdict to prevent the tenant from removing any of the tenant's possessions from the property (once a Default Judgment or a Summary Judgment is granted in respect of the Summons a Warrant of Execution is issued and the Sheriff can then sell these possessions at a sale in execution in satisfaction of the arrear rental).
5. Two Notices in terms of PIE - Notice in terms of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 – SS4(1) and Notice of Proceedings for the Eviction of an Unlawful Occupier Instituted i.t.o. SS4(1) of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 both supported by an Affidavit. These notices have to be served on the local authority (Municipality) advising such of the intention to institute action against the unlawful occupant for eviction. The Notices have to be served on the unlawful occupant and all those holding under him or her. The local authority and the unlawful occupant have to be given 14 days notice of the hearing.
6. The Affidavit in support of the above Notices has to allege unlawful occupation and give reasons for the requested eviction and why it is just and equitable to evict the unlawful occupant. At the hearing the unlawful occupier may attend and put forward reasons why he/she should not be evicted. The Court then has a discretion to grant the unlawful occupier time by which to a) vacate and b) the date on which the eviction is to take place if the unlawful occupier has not vacated as per the Courts Order.

Before a Court can grant an eviction it has to consider all the relevant circumstances and be in a position to rule that such an eviction is just and equitable. The owner approaches the Court on the basis of ownership alone and the unlawful occupation. It is then the occupier who may rely on special circumstances and the duty is on him/her to raise and present the special circumstances to the Court. The Court gives special regard to the rights of elderly, children, disabled persons and households headed by women. The Court may only grant the eviction after considering all the relevant circumstances.

The Court has a very wide discretion in ordering the date on which to unlawful occupier is to vacate and the date on which the eviction order may be carried out if the unlawful occupier has not vacated.

This is a lengthy procedure and depending on the Court's discretion it could be quite some time prior to the eviction during which the property owner does not receive an income from his property whilst having to pay the bond. An approximate period most often ordered by the Court is two months from the date of hearing. In conclusion the procedure to evict is more lengthy, cumbersome and expensive but evictions are still an every day occurrence.

Pitfalls

A Landlord has to act quickly. If the tenant remains in unlawful occupation (after the lease has been cancelled) for over six months the landlord may be requested to find alternative suitable accommodation. This most often is the assurance made in the Affidavit that there are other properties capable of being rented in the vicinity, subject to the tenant paying rental, which in this case the tenant fails to do.

Procedure after the order has been granted by the Court

Once the order has been granted by the Court for eviction the Sheriff is then empowered by virtue of this order to evict the tenant by force if necessary on the date as specified by the Court. The unlawful occupier's possessions are placed on the pavement and the locks are changed by a locksmith under the Sheriff's supervision. If there was a claim for arrear rental and judgment was granted the Sheriff may attach the unlawful occupier's personal possessions to satisfy this debt and such possessions are sold in execution.

Legal Costs

On average an unopposed eviction will cost the landlord approximately R 40 000.00. The PIE Act does not provide for the recovery of these costs from the defaulting tenant/unlawful occupier. Some Magistrate's grant this, but not often. The Sheriff's costs for effecting the eviction alone are R 18 000.00 (this is a disbursement included in the above estimate of R 40 000.00). The costs in respect of the Summons are recoverable but this accounts for approximately R 3 000.00 of the above sum. In the event the tenant vacates of their own accord after the hearing the Sheriff's costs of R 18 000.00 can be avoided.

Given the Tenant has not paid the rent recovering the arrears and legal costs takes a great amount of time as the tenant is most often simply destitute.