

Notes

Complying with the PIE Act: Your guide to residential evictions

A non-paying tenant cannot be evicted from the property absent a court order.

- One cannot take law into their own hands by cutting off the tenant's water or electricity supply or changing the locks – *mandament van spolie* (possessory remedy available to tenant).
- Separate summons for arrear rental; cannot claim arrears in eviction application.
- The tenant may be ordered to pay the legal costs of an eviction application.

Legal framework: Residential evictions

- No one may be evicted from a residential property without a court order, regardless of the circumstances.
- Section 25 of the Constitution provides that no one may be deprived of property except in terms of a law of general application.
- Section 26 of the Constitution provides that:
 - (1) Everyone has the right to access to adequate housing;
 - (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;
 - (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.
- The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 ('the PIE Act') governs the eviction of unlawful occupiers from land.

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- The PIE Act aims to balance the rights of landowners with the constitutional protections afforded to occupiers to ensure fairness and equity in eviction proceedings.
- The Act applies to natural persons occupying land for residential purposes and excludes certain categories of occupiers under other legislation. It applies to residential properties, including vacant land and structures used for shelter.
- The PIE Act prescribes the requirements for evictions, including mandatory notice periods and the opportunity for unlawful occupiers to defend their case.
- The courts are required to determine whether an eviction is "just and equitable" based on all relevant circumstances.

Best practices, as prescribed by the courts and case law

- Evictions must be conducted in a humane manner
- Intervention by the state to assist with the provision of alternative housing
- Meaningful engagement and mediation
- No unfair discrimination against an individual or group
- Compliance with procedural requirements = lawful evictions

The PIE Act prohibits unlawful evictions and imposes criminal sanctions upon those who do not adhere to the law. Illegal evictions include:

- Evictions without a court order.
- Evicting someone who lawfully resides at a premises.
- Intimidation, threats, or changing of the locks.

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- Forcing farm workers who live on a farm to leave after terminating their employment contracts.
- Constructive evictions (cutting off tenants' water or electricity supply). One cannot take law into their own hands by cutting off the tenant's water or electricity supply or changing the locks – *mandament van spolie* (possessory remedy available to tenant).

The courts' approach to determining evictions

A two-stage enquiry:

City of Johannesburg v Changing Tides 74 (Pty) Ltd and Others 2012 (6) SA 294 (SCA) at para 25:

1. Decide whether it is just and equitable to grant an eviction order having regard to all relevant factors
2. Consider what conditions must be attached to that order, by having regard to the impact of an eviction order on the occupiers and whether they may be rendered homeless thereby or need emergency assistance to relocate elsewhere

Ndlovu v Ngcobo, Bekker and Another v Jika [2002] 4 All SA 384 (SCA) at para 19:

Relevant circumstances:

“Unless the occupier opposes and discloses circumstances relevant to the eviction order, the owner, in principle, will be entitled to an order for eviction. Relevant circumstances are nearly without fail facts within the exclusive knowledge of the occupier and it cannot be expected of an owner to negative in advance facts not known to him and not in issue between the parties.”

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The eviction process:

Letter of demand

The lease agreement places various obligations on both the lessor and lessee.

Should one of the parties be in breach of such an obligation, a letter of demand must be sent affording that party a certain time period to rectify the breach. This is called placing the lessor or lessee in *mora*.

If the provisions of the Consumer Protection Act 68 of 2008 ('the CPA') are not applicable, the terms of the agreement will determine the time period that must be afforded to the party in breach to rectify this breach. If no time period is stipulated, seven (7) business days' notice is deemed to be a reasonable time period. Naturally, the circumstances surrounding the breach must be taken into account.

If the lessee is in breach and the provisions of the CPA are applicable, a letter of demand must be sent in terms of section 14(2) of the CPA affording the tenant 20 business days to rectify the breach. Note that, if the provisions of the CPA apply, a lessee will always be entitled to cancel a lease agreement without any cause by giving the lessor 20 business days' written notice, which, in turn, allows the lessor to charge a reasonable cancellation penalty.

The letter of demand must be addressed to the *domicilium citandi et executandi*, as chosen by the parties in the lease agreement ('chosen *domicilium* address').

Letter of cancellation

Should the party in breach fail and/or refuse to rectify the breach within the timeframe stated in the letter of demand, a letter of cancellation must be sent to that party at their chosen *domicilium* address.

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There are certain requirements which the cancellation letter must contain, the most important being a statement that the lease agreement has now formally been cancelled.

Should the party in breach be the lessee, the lessor must also request the lessee to vacate the premises within a certain time period. Note that, if the lease agreement (for whatever reason) is a month-to-month lease, the notice period for cancellation must be one calendar month. In all other instances, a reasonable period must be given, which will vary on a case-by-case basis.

The eviction application

Should the lessee remain in occupation of the premises after the time period referred to in the cancellation letter has lapsed, the lessor's attorney may proceed to draft an application for the lessee's eviction.

The lessor should provide their attorney with the signed lease agreement, an identification document, a copy of the letter of demand and cancellation letter, together with proof that both were served at the chosen *domicilium* address of the lessee.

The eviction application is a two-step process. First, once the main application has been prepared and issued by the court, it must be served on the lessee and all other occupants in the premises, as well as the local authority (this is known as a section 4(1) application or main application). Once the main application has been served, the lessor's attorney must then prepare an *ex parte* application for the court to authorise service of a further notice (this is known as a section 4(2) application and notice, respectively). Once the court authorises the section 4(2) notice, it must also be served on the lessee, all other occupants, and the local authority.

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Service by the sheriff of the court

Both the section 4(1) application and 4(2) application and notice are served by the sheriff of the court.

The main application will specify a date by when the lessee must indicate an intention to oppose the main application, failing such indication, the application will proceed on an unopposed basis.

The first court appearance

If the application is unopposed:

If the lessee fails to indicate that the application will be opposed, the application for an eviction order will proceed on an unopposed basis, and if the court is so satisfied, an eviction order should be granted.

An order for the eviction of a lessee in an unopposed matter will, in most circumstances, not take longer than four months to obtain.

If the application is opposed:

Should a lessee believe that there is a valid defence to the main application, they must indicate an intention to oppose and thereafter deliver an opposing affidavit setting out the defence. The lessor will have a right to deliver a response to the opposing affidavit, and thereafter, the court will set the matter down for hearing on a specified date.

During the hearing, the respective legal representatives will argue their clients' cases and the court will then decide to either grant or refuse the request for an eviction order. The court must, in terms of the provisions of the PIE Act, take certain factors into account before granting such order.

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An opposed eviction application can take up to 18 months before an order is made.

Alternative:

At any time during the opposed or unopposed eviction process, the parties may attempt to settle the matter and incorporate the terms of the settlement into a settlement agreement, which will then be made an order of court.

Granting the order

A court will only grant an eviction order after considering all the circumstances and if it is of the opinion that it is just and equitable to do so.

The only way to legally evict a lessee is by means of a court order. Lessors may not resort to self-help by, for example, changing the locks of the premises.

Giving effect to the court order

If the court grants an eviction order, such an order will specify the date upon which the lessee (and all others who occupy the premises) must vacate the premises. If the lessee fails to vacate the premises on said date, the sheriff will be authorised to remove the lessee from the premises after a warrant of ejection has been issued by the court.