



## NOTABLE CASE

<b>REFERENCE NUMBER:</b>	<b>RT- 241/22-2023</b>	<b>DATE:</b>	<b>10 JANUARY 2023</b>
<b>MATTER HEARD BY:</b>	<b>THE EASTERN CAPE RENTAL HOUSING TRIBUNAL</b>		

### 1. NATURE OF DISPUTE

Unfair and Unreasonable Penalties on cancellation of the Lease Agreement

### 2. PARTIES TO DISPUTE

Complainant who is the tenant and the 1<sup>st</sup> respondent which is the RENTAL AGENT and the 2<sup>nd</sup> respondent who is the property owner.

### 3. COMPLAINANT'S SUBMISSION

- 3.1** The matter concerns a complainant for unfair and unreasonable penalties on cancellation of the lease agreement, in the sum of R13 500.00. The complainant gave a notice to cancel the agreement on the 25<sup>th</sup> January 2022 and the vacating date was 30<sup>th</sup> April 2022.
- 3.2** The lease agreement entered between the parties was renewable and in the main for a period starting 1<sup>st</sup> December 2021 and ending 30<sup>th</sup> November 2022.
- 3.3** The complainant alleges that it was inappropriate and unjust for the respondent to claim penalties after giving three months and one week notice to vacate the rental dwelling.
- 3.4** The complainant alleges that the following actions were taken by the respondent after giving the notice to vacate:
- 3.4.1** 07<sup>th</sup> March 2022 – the first viewing for a tenant was scheduled; and
- 3.4.2** 23<sup>rd</sup> March 2022 – the second viewing was arranged; and
- 3.4.3** 20<sup>th</sup> April 2022 – the third viewing was set up; and
- 3.4.4** 25<sup>th</sup> April 2022 – a fourth viewing was set out and this client submitted the application on the 29<sup>th</sup> of April 2022. The application was successful, and a

new tenant secured the unit (this factual information was provided to the complainant by the respondent).

**3.4.5** 01 May 2022 – the complainant vacated the rental dwelling.

**3.5** The above notwithstanding, the complainant further alleged that after vacating the rental dwelling, she received multiple emails stating that she is liable for the penalties of up to the amount of R13 500

**3.6** Whereafter the complainant received an updated invoice dated the 08<sup>th</sup> of November 2022 with the additional amount of R13 500 which was not invoiced at any point between 01 May 2022 and 07<sup>th</sup> November 2022.

#### **4. RESPONDENT'S SUBMISSION**

**4.1** The respondent confirmed that the complainant entered into the lease agreement to rent the property and the last renewable lease started from 1<sup>st</sup> December 2021 and expired 30<sup>th</sup> November 2022.

**4.2** The respondent also raised the following points and claimed the following against the complainant:

**4.2.1** That the loss of rental income-The new tenant was secured from the 1<sup>st</sup> of June 2022 resulting in the property being vacant during the month of May 2022;

**4.2.2** That as the property owner, paid an agency fee for the duration of the renewed lease agreement which was calculated over 12 months; and

**4.2.3** That the Clause 21.1.2 of the lease agreement stipulates the following: "the Landlord shall be entitled to recover any loss suffered by the as a result of such early cancellation penalty of the Lease Agreement by charging the Tenant a reasonable cancellation penalty".

#### **5. RULING OF THE RENTAL HOUSING TRIBUNAL**

**5.1** Whereupon after reading documents filed of records and hearing, the Tribunal delivered the following judgement:

1. "That the complainant is not liable for any penalties associated with her tenancy of No 33 Riverside Drive, Bluewater Bay, Gqeberha".
2. "That there be no order as to costs."

## **6. REASON FOR THE DECISION**

- 6.1** As stated in paragraph 6.4.4 above, the respondent advised the complainant that he has secured a tenant who was to take occupation on 01 May 2022 (the situation that would have caused the respondent not to be out of pocket);
- 6.2 According** to the respondent, his new tenant contrary to accepted advise to the complainant did not take occupation on 01 May 2022 as anticipated.
- 6.3** The Tribunal made a finding that the breach of contract or breach of promise by the respondent's substituting tenant cannot be blamed/caused by the complainant as she vacated the leased premises then on the reasonable understanding that the respondent's property was to be occupied by the new tenant; and
- 6.4** It is tantamount to unfair practice for the respondent to seek to penalise the complainant in circumstances where her vacation of the leased premises was based on an undisputed facts of the respondent's version of events.