



NOTABLE CASE

REFERENCE NUMBER:	RT1048/02/23/B	DATE:	16 FEBRUARY 2023
MATTER HEARD BY:	THE NORTH WEST RENTAL HOUSING TRIBUNAL		

1. NATURE OF DISPUTE

An alleged unfair practice by the respondents' of refusing to refund a key deposit.

2. PARTIES TO DISPUTE

Complainant: A tenant in his personal capacity, represented by a legal practitioner.

1st respondent: A property practitioner represented by an agent, 2nd respondent, a landowner represented by a director of the property practitioner.

2. Parties agreed to the following:

2.1.1 That an amount of R16 000.00 was paid as a deposit.

2.2 The Complainant conceded that.

2.2.1 An amount of R1 725.00 being a lease termination fee may be offset against the deposit.

2.2.2 An amount of R2 615.79, being the utility bill, may be offset against the deposit.

2.3 Points not in dispute:

2.3.1 The Complainant and the 2nd Respondent entered into a written lease for the period 03/08/2022 to 31/07/2023.

2.3.2 The 1st Respondent acted as an agent for the 2nd Respondent in terms of a written mandate.

2.3.3 The complainant gave notice of cancellation on 1 December 2022 with the effective date being 31 January 2023.

2.3.4 That a new tenant was procured for a fixed term from 1 February 2023.

3. COMPLAINANT'S SUBMISSION

- 3.1 In essence the complainant argued that she cancelled the lease due to the 2nd respondent's failure to effect repairs and maintenance and that she viewed this inaction as a material breach.

4. RESPONDENT'S SUBMISSION

1st RESPONDENT'S SUBMISSION

- 4.1 That the 1st respondent is entitled to offset the amount of R11 040.00 from the deposit. This amount being the commission earned in terms of the mandate with the 2nd respondent.

2nd RESPONDENT'S SUBMISSION

- 4.2 That the 2nd respondent is entitled to charge a penalty as per paragraph 1.29 and 21.2.1 of the lease agreement
- 4.3 That the 2nd respondent is entitled to recover the legal fees she incurred in term of paragraph 26.1 of the lease.

5. RULING OF THE RENTAL HOUSING TRIBUNAL

- 5.1 The legal framework when adjudicating this dispute is the written lease, and the Rental Housing Act, Act 50 of 1999 As Amended
- 5.2 By virtue of the fact that the lease agreement is a fixed term agreement the Consumer Protection Act, Act 68 of 2008 is also applicable.
- 5.3 When making a ruling the provisions of the lease should apply insofar as it is not inconsistent with the legislation.
- 5.4 The lease provides in paragraph 24 for the right of the tenant to cancel the lease in the event of material breach without penalty. There is a provisio for this. In terms of paragraph 24.2 the tenant must give the landlord written notice, and may only cancel when the landlord fail to remedy within 20 business days. By her own admission the complainant conceded that she did not comply with this provisio . She can therefore not rely on this in her pursuit to recover the deposit.
- 5.5 This does not leave her without remedy. In terms of section 14 of the Consumer Protection Act a consumer (tenant) may cancel an agreement by giving 20 business day notice of cancellation.

- 5.6 In terms of section 14(3)(b)(i) the supplier may impose a reasonable cancellation penalty. This penalty must be read with regulation 5(2).
- 5.7 In paragraph 21 of the lease agreement provision is made for the cancellation of the lease before the expiry of the fixed term. This paragraph however does not offer the same protection as the provisions of the Consumer Protection Act and the latter should be applied.
- 5.8 In terms of section 3(1) of the Consumer Protection Act “ the purposes of this Act are to promote and advance the social and economic welfare of consumers in South Africa by –
- (a) establishing a legal framework for the achievement and maintenance of a consumer market that is fair, accessible, efficient, sustainable and responsible for the benefit of consumers generally;”
- 5.9 The 2nd respondent in this matter is the service provider insofar as the provisions of the Consumer Protection Act are applicable.
- 5.10 The 1st respondent is the agent of the 2nd respondent and for purposes of the act there is no supplier/consumer relationship between the complainant and the 1st respondent.
- 5.11 It follows that any dispute regarding commission is irrelevant for the purposes of the application of section 14(3)((b).
- 5.12 The purpose of the provision of a reasonable penalty is inter alia to safeguard the supplier against loss stemming from the cancellation by the consumer.
- 5.13 The reasonable cancellation penalty is regulated by regulation 5 of the Consumer Protection Act Regulations.
- 5.14 In terms of regulation 5(2) “a reasonable credit or charge as contemplated in section 14(4)(c)) may not exceed a reasonable amount taking into account...(h) the length of notice of cancellation provided by the consumer; (i) the reasonable potential for the service provider, acting diligently, to find an alternative consumer.”
- (This position echoes the common law principle that “the law expects the landlord to take reasonable steps to find another tenant to replace the one who fled”. (See in this regard Joubert “General principles of the law of contract 1987 p254).
- 5.15 The parties are ad idem that an alternative consumer was placed from 1 February 2023. In this regard the 2nd respondent did not suffer any loss of income.
- 5.16 The R11 040.00 commission paid by the 2nd respondent to the 1st respondent does not qualify as a reasonable cancellation fee or charge for the reasons

stated above.

5.17 The Tribunal is satisfied that the amount of R1 725.00, referred to as an “early cancellation fee” constitutes a reasonable fee.

5.18 The 1st respondent and 2nd respondent are entitled to offset from the deposit of R16 000.00 the following amounts:

5.18.1 the utility bill of R2 615.79

5.18.2 the legal cost bill in the amount of R1 430.00

5.18.3 the lease termination fee of R1 725.00

6. REASON FOR THE DECISION

6.1 The 1st respondent and 2nd respondent are jointly and separately ordered to refund the amount of R10 229.21 to the complainant by 27 March 2023.

6.2 The 1st respondent and 2nd respondent shall be responsible for the cost of enforcing this ruling in the Magistrate court on the applicable party and party scale.