1) Lessor may not disturb Lessee in his possession once property is delivered to Lessee. Lessor may not disturb Lessee in his commodus usus unless lawfully e.g. if he is required to inspect property or when Lessor needs to effect necessary repairs.

STUDY UNIT 7

Lessor must deliver the thing in a specific condition & maintain it thus:

1) Condition of property @ time it is made available.

- Where a thing has been let for a specific purpose, it must be delivered in such a condition that it will be fit for that purpose. Where there is an express agreement about condition of thing, lessor must comply with it. A lease creates continuous obligations.
- Payton v. Cran. A condition in which a thing is delivered must be in accordance with provisions express or tacit of an agreement. If a contract contains no express agreement, lessor must deliver the thing in condition it was when contract was entered into.

Therefore when a thing is delivered there must
be no defects contrary to contract. If defects occurred after contract was concluded but during subsistence of lease, lessee is compelled to effect repairs provided no stipulations to contrary.

2) Condition of property during currency of lease

Due to wear and tear, deterioration only once property has reached such a stage were it property is no longer fit for purpose for which it was let, lessee compelled to do repairs to comply with contractual obligation of keeping property in a fit state.

Lessee is only liable for breach of contract if he was aware that defect occurred after contract was concluded. Lessee must give lessee notice unless lessee was aware or ought to have known as an expert.

Landlord is only liable for the repairs of structural defects & not structural improvements except if it is for purpose served by rented property.
If I lessee undertakes to effect repairs must he also repair structural defects?

In Salmon v Deallow

Court held: I lessee will only be required to make repairs if care needed to keep a house in a good condition. He will not be required by contract or common law to make structural alterations.

* From all cases I principle is that subsidiary parts of I property must be replaced or renewed by I lessee (if he has undertaken to do repairs), but he doesn't have to renew I whole thing to ensure its continued existence.

If I lease contains a clause casting an obligation on I lessee to maintain I lessee is not obliged to improve I thing & return to I lessor in a better condition than what it was when I took occupation.

Where roof is no longer capable of repair, I lessee will not be obliged to put on a new roof. Such a renewal must be effected by I landlord.
3) Contractual Duty or Ex Lege Warranty?

If it involves ordinary duties i.e. duty to deliver the thing in a specific condition and maintain it thus), the lessee will not be held liable if the thing was not at any time in the required condition, if the lessor was unaware or the lessor ought to have reasonably been aware or she had taken all precautions against it.

Fault is a requirement for liability for breach of contract but not a requirement by virtue of breach of warranty. When dealing with an ex lege warranty in the case of a lease, if the rent was payable, if it was not possible for him to have reasonably been aware or if she had taken every reasonable precaution will not avail the lessor.

**Remedies**

4.1) Cancellation

A lease may be cancelled if there is a major breach of contract, if the condition of the property on delivery is unfit for the purpose for which it was let or during the lease, it falls into a condition or it cannot be repaired, the lessee may cancel the contract.
4.2 Specific Performance

Tenant may only use this remedy in case of ordinary repairs & not structural improvements.

In Marais v Cloete it was held that an obligation to repair is so vague that the court cannot supervise an order of specific performance.

Although according to our courts he/she cannot enforce specific performance, the lessee may obtain it as a result of specific performance by making repairs himself & deducting his costs from rent, provided the lessor has failed to comply with the lessee's demand for repairs. If the lessee does this without notice to the lessor, the lessor is not liable for the cost of repairs.

4.3 Remission of Rent

This can be claimed if the lessee has suffered a minor inconvenience & the lessor failed to comply with his request for repairs. Remission of rent must be claimed in accordance with the degree of inconvenience suffered.
4.4. Damages may be claimed as a result of a loss suffered due to a defect.

(1) Tenants' Knowledge
If the lessee knows about a defect at the time when the contract is entered into, the lessee loses claim for damages for warranty to safeguard himself. The lessor is not required to inspect the property before concluding the lease. If he does inspect, he will lose his claim for damages in respect of all patent defects that existed at the time of inspection.

(2) Landlord's Actual Knowledge of Defect
If the landlord knows of a defect, he is liable for loss caused by such defect. If the landlord gives a warranty that the property is free from defects and he is unaware of the defect, nonetheless, he is still liable.

(3) Where the Lessor Should Have Known of a Defect
Old writers hold that the lessor is not bound to compensate a lessee for loss sustained because the lessor failed to maintain the premises in proper condition unless the lessor knew or ought to have known of a defect. Cooper holds that the lessor should be liable for loss suffered by a lessee caused by a defect even if the lessor had no knowledge of the defect.
4) Where a lessor has no actual or constructive knowledge, if landlord has no knowledge, he is not liable unless he gave express warranty. Cooper holds that in addition to a lessee's claim for damages for a defect, he may cancel contract if a defect is serious or claim remission of rent where a defect is less serious.

STUDY UNIT 8
THE LANDLORD MUST GUARANTEE A TENANT AGAINST EVICTION

Warranty against eviction binds a lessor to compensate a lessee who was evicted from a whole or part of a property by a 3rd person with a better title. If a lessor has no title and a owner ejects a lessee, a lessor is liable for damages, unless a lessee was aware of a lessor's lack of title.

Glatthaar v Hussan - Facts
Plaintiff owned a portion of a farm, he sold it to one Coetzee but before coetzee could acquire ownership, Coetzee let a property to defendant who went into occupation. Coetzee never became owner as he failed to pay to purchaser price. After sale was cancelled, plaintiff sued defendant for ejectment. Defendant argued that he was lawfully in position as lessee because he had paid 4 years rent in advance. The plea failed & an order for ejectment was recognised, granted.
Hussan is not void of remedy. It is Coetzee who must make good to Hussan whatever loss he has incurred.

Wessels J said: "It is true that if I let you another's land, if I do so you cannot question my title nor can I deny your right to hold the land against me; but this in no way will prejudice my rights of being true owner."

A lessor may validly let something belonging to another. Furthermore, lessor does not guarantee his title. I only obligation on lessor is to place lessee in possession of the undisturbed possession.

As in case of contracts of sale the law presumes ex lege warranty in case of contracts of lease as well. For e.g.: lessor does not guarantee against unlawful hindrances. So any threats of eviction does not yet constitute breach of contract by the lessor. So a lessee would not have any claim against lessor if she leaves as soon as a 3rd person threatens to evict her. She must carry on paying I rent. If she fails, she breaches the contract. Warranty does not apply to Acts of God & expropriation.
Remedies

Cancellation
Lessee may cancel or rescind contract if totally evicted or evicted to a serious degree.

Damages
Lessee will irrespective of his knowledge have a right to damages only when lessor terminates rights voluntarily.

STUDY UNIT 10 (TENANTS DUTIES)
THE TENANT MUST PAY THE RENT

CERTAINTY - essential element of a contract
If performance is vague, contract void for vagueness. Contracts in which performance are left by parties or a party to decide at a later stage are invalid.

Certainty of performance can be attained in 2 ways:
1) Defining performance (obligations partner wish to create)
2) Identifying an external standard by which performance should be determined.