

①

Oct | NOV 2010

Q2.

Duty of a tenant to use a property for a purpose for which it was let:

A lessee must use a property for a purpose for which it was let & he must exercise a care of a bonus paterfamilias (reasonable person) in looking after a property. A good test for determining whether a lessee is misusing a property is to inquire if he or she is changing a nature of a property.

Where a agreement gives no indication of a purpose for which a prop must be used, a lessee must use it for a purpose for which such property is ordinarily used, provided a lessee may not do anything which may decrease a value of a property.

In a present case a property was not let for a specific purpose. To use residential premises for business purposes will change a nature of a premises. Thus residential premises may not be used to run a business from.

Remedies: (1) claim damages (2) or an interdict restraining a lessee from misusing a property (3) cancel a contract where a misuse is of a serious nature.

② Consequences of a failure to pay \perp rent on time

(A) If \perp lessee does not pay \perp rent on time, he commits a B.O.C. \perp lessor may uphold \perp contract, claim \perp rent which is owing & damages. The lessor may also rescind \perp contract.

If there is a term in \perp contract \perp landlord may resile if \perp tenant fails to pay \perp rent. Lessor can automatically resile \perp contract.

There is a good deal of uncertainty about \perp circumstances in which \perp landlord is entitled to resile on \perp ground of \perp tenants failure to pay \perp rent.

According to common law - a landlord could not resile before \perp rent had been in arrears for 2 years. However in Goldberg v Buytendag Boerderij Beleggings \perp AD held \perp this rule had become superflous & \perp lessor could acquire a right to rescind by giving \perp lessee a notice of rescission.

(B) Consequences of a failure to pay \perp rent on time Eviction procedure.

In \perp past SA courts held that in a claim for eviction, it was sufficient to allege \perp $\frac{1}{15}$ plaintiff was \perp owner ^{of \perp property} & \perp defendant in possession thereof.

Section 26(3) of \perp constitution act 108 of 1996 gave

rise to \perp promulgation of \perp Prevention of Illegal Eviction from \perp Unlawful Occupation ^{of land} Act 19 of 1998.

PIE provides strict requirements & provisions for \perp eviction of unlawful occupiers.

The ? \perp arose in Ndlovu Vs Ngcobo & Bekker & Another V Jika was whether P.I.E applied to persons who once had lawful possession but whose possession has become unlawful for some reason.

In \perp Ndlovu case, \perp tenants lease was terminated lawfully but he refused to vacate \perp premises. In \perp Bekker appeal, mortgage bond was called up, property sold to appellant, owner refused to vacate \perp property. In both \perp above cases \perp applicants for eviction didn't comply with \perp req of P.I.E.

When defaulting tenants or mortgagors fail to vacate \perp property they are said to be holding over.

P.I.E applies to "~~holding~~" unlawful occupiers" defined as someone who occupies land without \perp right to occupy land through tacit or express consent of \perp owner or any law.

Does "unlawful occupier" include holding over. In \perp above cases, \perp court held = P.I.E did apply to cases of holding over.

(4)

PIE differentiates between unlawful occupiers \pm occupy land for less than 6 months & those \pm occupy land for more than 6 months. In both cases Req have to be met.

Occupation less than 6 months.

A court will grant ~~a~~ an eviction order if it is of \pm opinion \pm it is just & equitable to do so after considering \pm ffg, \pm rights & needs of \pm elderly, disabled persons, children, Households headed by women.

Occupation more than 6 months

same but also As well as \pm fact \pm land has been made available or can reasonably be made available ~~through~~ by municipality, or other organ of state or another land owner.