

Passing cost increases onto tenants - can/should it be done?

Landlords can incur cost increases as a result of municipality property valuations escalating rates, rising insurance premiums, or as levies increase on sectional title property. Can landlords insist that their tenants help fund the difference by imposing a rental increase during the term of a lease?



Shaun Dubois, principal of Just Property, Pietermaritzburg

“No”, says Shaun Dubois, principal of Just Property, Pietermaritzburg. “A landlord may not increase the rent in any way during the lease period, unless provision for this was agreed to and included in the lease before it was signed.”

Dubois explains that while it is much more common in commercial leases, some residential leases contain clauses that allow landlords to pass any increase in their costs related to the property to the tenant.

There are any number of variables that may increase a landlord’s costs over the term of a lease. As the months go by, the Reserve Bank’s repo rate will rise and fall, affecting the prime lending rate and possibly what the landlord is paying on his bond, but Dubois has never come across an interest rate increase being passed onto a tenant.

The most common increases that would lead to such a clause in a lease being invoked are when municipal rates go up. Dubois says he has also seen the clause used to cover insurance-premium increases but notes that this is extremely rare.

What the CPA says on the matter

It is important to note that the CPA (Consumer Protection Act) prohibits landlords and tenants from “contracting out of Law”. Some suggest that this means a lease cannot contain a specific escalation percentage for the renewal, and that increases should be renegotiated at each renewal.

So, landlords facing increased costs might be tempted to increase the monthly rental at renewal time by the amount required to cover such costs. Dubois advises landlords to remember that in terms of the unfair practice regulations, they are required to give the tenant no less than two months’ (40 business days’) notice of an increase.

“An increase in accordance with the Consumer Price Index is safest,” says Dubois, “but tenants will always prefer less, and landlords will always want more. In past years, escalations were an almost standard 10% but the market has changed and, in many cases now, the increase-percentage has decreased.”

So, adding a rates-related increase on top of CPI might lose you a good tenant. “Escalations need to be fair,” Dubois warns. “That said, there is no legislation that governs the escalation rate.”

What is the solution?

Are there alternative options for landlords, some of whom are facing large adjustments to their valuations, and therefore extensive rates hikes? “Both parties need to negotiate in good faith, taking into account the tenant’s payment history and

other positive or negative information,” says Dubois.

It is Dubois’s understanding that as long as the signed lease shows that both parties have contracted into allowing for a particular increase or cost, then such an increase would be lawful. He warns against imposing a “special levy”: “Even if it is legal, such a move would be very unusual and is not encouraged.”

Dubois says it is imperative that landlords factor in possible increases in levies, rates and the effects of interest rate increases or decreases when they buy an investment property and also when they come to marketing it. Better still, get a respected property agent who knows the market to advise you, and never over-extend yourself to the point where one increase or a defaulting tenant will push you into a situation where you are facing the prospect of repossession.

Defaulting tenants

“Sadly, we often come across owners who are desperate to sell because they have placed a tenant privately that has defaulted,” says Just Property CEO, Paul Stevens. “Owners who cannot cover their bond should approach the bank as soon as possible of the situation and then try to sell the property. Too often owners wait until their bank has served them with court papers. It is still possible to sell the property but the longer the owner leaves it, the less chance they have of the bank consenting to a sale or delaying legal action.”

What is Dubois’ advice to a tenant who finds themselves in a situation where rentals are being increased by more than CPI to cover escalating costs? “Fortunately, tenants have easy access to similar properties around them on the internet,” says Dubois. “Moving costs should be taken into account but if the increases are too onerous, they should give their landlord or rental agent proper notice and look for alternative housing.”

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