



NATIONAL ASSOCIATION
OF MANAGING AGENTS
SHAPING OUR PROFESSION

NAMA Notice Board

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Duty to comply with your payment obligations in respect of residential lease agreements

1. As you aware on 23 March 2020, in a rapid response declaration aimed at breaking the curve of the covid-19 pandemic, the President imposed a 21-day nationwide “lockdown”, which has been extended for a further period of 14-days, until 1 May 2020.
2. Undoubtedly, these measures have already had severe consequences for our already ailing economy. South Africa, like many other counties hit by Covid-19, is facing a significant economic downturn in the wake of the pandemic.
3. Concerningly, many tenants who were in good standing with their landlords prior to the lockdown, may soon be unable to pay their rental.
4. We have encountered instances where tenants have either enquired or asserted that their obligation to pay rental would be suspended or rendered unenforceable in the lockdown period – contending for a “rental payment holiday”.
5. Rumours to this effect have been widely spread over the internet and social media.

THE LEGAL POSITION

6. Our Government have announced and implemented a host of relief measures aimed at mitigating the socio-economic and financial hardships so inextricably linked to the cessation of business caused by the lockdown.
7. In no one of these measures, have the Government sought to prohibit private entities and individuals from enforcing their legal and contractual rights, whether it be in respect of lease agreements or otherwise. Simply stated, Government is not lawfully or morally entitled to do so.
8. The assertion that a tenant would somehow, as a result of Covid-19 or the lockdown, be entitled to unilaterally decide to withhold rental is without any legal basis.
9. To reiterate, there is no regulation or empowering legislation which entitles or permits tenants (of residential or commercial property) to withhold payment of rental.
10. As a general principle, a failure to pay rental and costs ancillary to the occupation of the property is tantamount to a breach of a lease agreement (whether it be written or verbal) and, if left unremedied, would entitle the landlord to cancel the lease, claim arrear rental, sue for damages, and launch an application to have the tenant evicted.
11. Although one may empathise with tenants who are left in financial distress as a result of Covid-19, this is not in itself a legal justification for the non-payment of rental nor would it excuse a breach of a lease agreement.
12. Accordingly, each party to a residential lease agreement must fully and properly comply with his / her / its obligations in terms of such lease agreement.
13. Tenants who find themselves in financial distress and unable to pay rental would be well advised to engage with their landlords in seeking a concession or a deferment in respect of rental payments, which the landlord may in his sole discretion grant or refuse.



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