

Are landlords obligated to pay tenant utilities that are in arrears?

Property experts weigh in on whether landlords are still obligated to pay tenant utilities that are in arrears, even if their rent payments are up to date.



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“The landlord’s obligation in this regard does not change because the tenant does not pay the rent or utilities,” says Cilna Steyn of SSLR Inc. Attorneys, Notaries and Conveyancers. “The landlord must ensure that he continues to make payment to the service provider.”

Steyn illustrates the requirement with the following example: “Non-payment of a tenant’s rent in no way absolves the landlord from their loan-repayment obligations towards the bank. Similarly, even if your tenant hasn’t paid you for their use of utilities, as the property owner, you are still responsible for utilities payments.”

Shaun Dubois, Just Property Pietermaritzburg franchisee, agrees, noting that municipalities seek to recover outstanding amounts from the owner, even though it was the tenant that consumed the electricity/water. “This highlights the importance of managing utilities as diligently as rent,” he says.

More and more municipalities allow only the owner to open a utilities account. “This is helpful for better control and does resolve some issues, as long as the account is well managed,” says Dubois, who believes this to be one of the important areas in which rental agents can assist landlords. “We send the utility accounts to our tenants. Should a tenant be in arrears with their utility payments, they will receive a letter of demand from our attorneys, just as they would if they fell behind with their rental.”

Ensure timeous billing of tenant

Both Dubois and Steyn recommend that landlords have accounts directed to either themselves or their rental agent to ensure timeous billing of the tenant. “If the landlord has not been receiving the account and is unsure of whether it is being paid, we recommend that they contact their municipality for a copy,” adds Dubois.



Olina Steyn of SSLR Inc. Attorneys, Notaries and Conveyancers

What is a landlord's recourse when a tenant does not pay utility bills? Steyn reminds landlords that it is unlawful to disconnect services for non-payment without a court order (even though cases exist where the courts have granted such a request where the landlord was significantly prejudiced by having to fund these services).

And, she adds, if a landlord stops paying utility bills because of a tenant's non-payment, "the consequent disconnection of services by the municipality will render the landlord in breach of the tenancy agreement. The landlord has to continue paying the accounts, even if the tenant is not holding up their end of the agreement".

Dubois says these issues highlight the importance of clearly outlining expectations with regard to utility payments in professionally prepared leases.

Avoid DIY leases

DIY leases are never a good idea and one of the many issues that can arise is the landlord's allocation of payments. Steyn agrees: "In

terms of the landlord hypothec, items held on the premises can only be used as security in favour of the landlord for outstanding rental and not any other costs," says Steyn. "If the landlord does not have the right to allocate payments to utilities included in the lease, he could end up in a position where he cannot attach any items to cover utilities non-payment because the rent is up to date. In such a case, it is therefore in the landlord's interest to pay the utility accounts himself and to issue a summons to recover costs."

Failing success after attempts at recovery, eviction is the final solution. "If a tenant is in breach of any term in the lease agreement, be it payment of certain amounts or be it non-compliance with certain house rules, the landlord is entitled to place the tenant on terms to remedy the breach," says Steyn. "If the tenant does not remedy the breach within the allotted time period, the lease agreement can be cancelled, rendering occupation illegal. The landlord can then proceed to institute eviction proceedings against the tenant."

Paul Stevens, CEO of Just Property, recommends that tenants who are struggling to meet their commitments, communicate their difficulties to their rental agent as soon as possible. "While we understand that landlords have also been affected by the current economic climate, we always encourage dialogue. If you are in arrears, whether on your rental or your utilities payments, contact your rental agent. They will do what they can to help you remedy the situation. There is sometimes a way to implement a payment plan."



Paul Stevens, CEO of Just Property