

Late Rent : Calculating Interest Fees in Line With All Relevant Legislation

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INTRODUCTION

The question often arises as to whether a landlord can charge a tenant a late payment fee, or interest on the unpaid rent if the tenant does not pay the rent due or does not pay it on time.

This is often an incredibly frustrating experience for the landowner, and they may want to punish the tenant should this be a regular occurrence. There are however important pieces of legislation that govern this that need to be complied with to ensure that everything is done within the law.

THE LEASE AGREEMENT

The Lease Agreement should be your first point of consultation. The date on which the rent is due and payable should be set out in the Agreement, as well as the interest that may be charged, or any other relevant provisions.

Although not required by law, some Lease Agreements may include a grace period for when the rent is due and payable, whilst other Agreements will require the rent to be paid on or before a specific date.

Depending on the Lease Agreement, the due date of the rent, as well as the interest to be charged in the case of late payment can all be determined by the relevant provisions agreed upon.

THE NATIONAL CREDIT ACT 34 OF 2005

A common misconception about the National Credit Act (the “NCA”), is that it applies to the above scenario. Although we will discuss its importance later on, it is necessary to note Section 8(2)(b) of the NCA, which states that *“An agreement, irrespective of its form, is not a credit agreement if it is a lease of immovable property”*.

When read with Section 4 of the NCA, we can determine that the NCA has no application when discussing the leasing of a building or dwelling, which constitutes an immovable property.

This does not mean that there is no other legislation that is applicable.

THE RENTAL HOUSING ACT 50 OF 1999

Section 3(c)(i) of the Unfair Practices Regulations, published pursuant to the Rental Housing Act, provides that *“A lease agreement must exclude any provision which imposes a penalty for late payment of rent whether or not the penalty takes the form of administrative charge or any other form other than interest”*.

This means that any late payment fee or similar charge may not be included in a lease agreement, unless it is in the form of interest. Flat fees or any similar fees for late payment are therefore not permitted. It is important to note that these provisions will only automatically apply to residential leases, and late payment penalties are permitted in commercial or retail leases. Should you have a residential lease agreement that includes this type of excluded fee, it does not mean the entire agreement is null and void, it merely means that this specific clause is unenforceable.

Interest on the other hand, is specifically mentioned as allowable in the above section, and may therefore be included and enforced in residential lease agreements.

When calculating interest, a landlord needs to ensure that the interest is reasonable and not excessive.

Because we have no working definition of “reasonable” available, we now turn to the NCA, which provides us with some guidance.

Although specifically excluded by the NCA, as discussed above, rental arrears on lease agreements of immovable property are very similar to incidental credit agreements, therefore it is common practice to follow the maximum prescribed rate of interest, which is currently capped at 2% per month or 24% per annum.

THE PRESCRIBED RATE OF INTEREST ACT 55 OF 1975

Should the Lease Agreement not include any provision where an interest rate is mentioned, The Prescribed Rate of Interest Act (the “**PROIA**”) will apply.

The PROIA prescribes the maximum amount of interest that may be charged, which is calculated by observing what the repo rate was at the time that the rental became due and payable and then adding 3.5%.

Unless otherwise agreed upon with the tenant, the rental is only due and payable on the date of demand, and interest may only be charged on the overdue rental from this date.

Currently the prescribed rate of interest is 11.25% per annum.

CONCLUSION

When calculating interest on late rental payments, the Lease Agreement is the primary consultation point, however, due care must be exercised to ensure that all the relevant provisions are in compliance with the above legislation.



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