

The tenant/landlord/body corporate triangle

 By [Anton Kelly](#)

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Many, many sectional titles units are bought as investments and the sections occupied by tenants - I wonder what the proportion is?

Normally, the lease of a property gives rise to two relationships: the relationship between the landlord and the tenant, and the relationship between the tenant and the leased property. However, when the lease is of sectional title property, a third relationship exists: the relationship between the tenant and the body corporate of the sectional title scheme.

The first two relationships are often fairly well understood. Essentially, the tenant must pay the rent and not damage the property, and the landlord must make sure that the property is maintained so that it provides the intended facilities. A tenant is not entitled to withhold the rent even if the landlord fails to maintain the property. The landlord can't just evict the tenant, for whatever reason. An eviction has to be authorised by a court order. These relationships are well defined in the Rental Housing Act.

Not nearly as clearly defined

The relationship between the tenant and the body corporate is interesting because, despite its importance, it is not nearly as clearly defined as the other two relationships in a tenancy. On the one hand, the lease is a contract between the tenant and the owner of the section, and has nothing to do with the body corporate. On the other hand, the tenant lives in the scheme and, in day-to-day living, has more or less the same effects on the scheme as an owner would. Like an owner, a tenant is bound by the rules of the scheme. While it is the duty of the body corporate to enforce the rules, owners also have the duty of ensuring that their tenants comply with the rules. The question is, from a practical point of view, do the trustees deal directly with the tenant if there is a breach of the rules, or do they deal with the owner landlord?

It's best for the trustees to deal directly with the tenant, at least initially, for two reasons:

- Unless it has gone sour, the relationship between the landlord and the tenant is symbiotic in nature. The landlord has a tenant and a rental income, and the tenant has a place to live that is someone else's responsibility. They want to preserve that relationship, and so are likely to join forces against the trustees; and
- Secondly, although much more difficult than using a third party to deliver an unpleasant message, it is usually more effective to approach the tenant in person, in a polite and non-confrontational manner. A respectful discussion of the matter, listening to the reason the tenant broke the rule, provides the best chance of addressing the fundamental issue that lead to the rule being broken in the first place.

Visit rather than write, and if the breach of rules continues, write before pressurising the owner to take drastic action.

ABOUT ANTON KELLY

Anton Kelly is the course convener of the University of Cape Town (Law@Work) Sectional Title Scheme Management short course. He is a specialist sectional title and community scheme teacher and adviser at Paddocks, a specialist sectional title and home owners' association training firm.
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