

# KNOW YOUR RIGHTS

## Evictions during Level 4 Lockdown

### WHAT ARE YOUR RIGHTS DURING LEVEL 4 OF THE LOCKDOWN? EVICTIONS WITHOUT COURT ORDERS ARE ALWAYS ILLEGAL.

During Level 5 lockdown, Regulation 11CA made it clear that even with a court order, no person could be evicted from their place of residence.

Evicting anyone during that time was an offence, and if found guilty you would have to pay a fine, go to prison for up to six months, or both.

Now that we are in Level 4 lockdown, the question “Can I be evicted?” must be broken down into three parts.

#### PART 1: CAN COURTS HEAR APPLICATIONS FOR EVICTIONS DURING LEVEL 4?

Yes. It is possible for courts to hear eviction applications during lockdown Level 4.

No eviction can ever take place without a court order, and the person who wants to evict you must make an application for such an order. These applications may be made, and heard by a court, during Level 4 but subject to the relevant court’s directions.

#### PART 2: CAN A COURT MAKE AN EVICTION ORDER DURING LEVEL 4?

Yes. In addition to hearing the application for an eviction order, the court could also grant an eviction.

#### PART 3: CAN AN EVICTION ORDER BE CARRIED OUT (“EXECUTED”) DURING LEVEL 4?

As a rule the eviction order cannot be executed until the last day of Level 4.

But, if the court is of the view that it is “just and equitable” to execute the eviction order before the end of Level 4, then the eviction can be executed, and the sheriff can then physically evict you.

However, this depends on the circumstances of each case.

The court can consider any issue to determine if it is just and equitable to order the execution of the eviction order before the end of Level 4, but must consider:

- The reason for the eviction.
- The personal circumstances of the persons to be evicted, especially children and people with special needs.
- Alternative accommodation available.
- The risk to being exposed to people who have corona virus.

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## **CAN I STOP PAYING RENT IF I AM WITHOUT AN INCOME?**

No. The law does not allow tenants to stop paying rent, unless your lease agreement specifically allows it.

Our advice is that a tenant who cannot afford rent, because of a lack of income during the lockdown period, should talk to the landlord to negotiate an alternative arrangement – like paying the arrears off over a period of time.

If, however, you and your landlord cannot agree to an alternative arrangement, and the landlord elects to cancel the lease, the landlord still cannot evict you without following the lawful process of obtaining a court order first.

## **CAN I BE EVICTED WITHOUT A COURT ORDER?**

No. No person may ever be evicted without a court order and no landlord is allowed to disconnect electricity or water without a court order.

## **WHAT SHOULD I DO IF MY LANDLORD THREATENS TO EVICT ME WITHOUT A COURT ORDER?**

You can explain to the landlord that eviction without a court order is a criminal offence under section 8 of PIE, as well as regulations 19 and 31(2) of the COVID-19 regulations.

If your landlord persists with the threats and tries to evict you without a court order, you must immediately call the police, and explain that your landlord has no court order to evict you.

## **ROLE OF POLICE**

Per section 205 (3) of the Constitution of the Republic of South Africa, the role of the police is to maintain public order, protect and secure the inhabitants of South Africa, to uphold and enforce the law and to prevent and investigate crimes.

This means if your landlord tries to evict you without a court order, the police can be called to arrest your landlord and restore order.

## **WHAT SHOULD THE POLICE DO IF CALLED TO AN UNLAWFUL EVICTION?**

Should the police be called to an unlawful eviction, they need to advise the landowner to approach a court for an order of eviction.

The police should ensure that the unlawful eviction is stopped and that the occupier is not evicted.

## CAN THE POLICE ASSIST IN AN EVICTION?

Only a sheriff and persons authorized by a court to assist the sheriff may carry out an eviction order, provided that the sheriff must at all times be present during such eviction or actions authorized by the court (e.g. demolition and removal of buildings or structures), subject to the conditions as determined by the court.

In situations where there is sufficient information to indicate that a sheriff and his or her employees may be exposed to injury, death or damage to property, members of the SAPS will be requested to assist the sheriff to ensure law and order, as well as protection service.

The sheriff may request assistance (protection) from the SAPS with the execution of a court order where that sheriff expects resistance.

Members of the SAPS may not participate in the eviction but must render protection to the sheriff and his or her staff. A person, who wilfully obstructs or interferes with the duties of a sheriff or his or her assistants in the performance of their duties, is guilty of an offence.

## CAN THE MUNICIPALITY DEMOLISH MY SHELTER AND EVICT ME?

No. The municipality cannot evict you from **any shelter or structure that you are already living in**, even if you have only been living in that shelter or structure for a short time.

The municipality also cannot demolish any of your belongings, including your building materials, without a court order specifically allowing them to do that.

## WHAT MUST I DO IF THE MUNICIPALITY THREATENS TO EVICT ME, OR TO DESTROY OR DAMAGE MY PROPERTY?

1. You must take photos/videos of the people doing this to you.
2. Try to write down the names of any of the officials, and whether they are SAPS, municipal law enforcement, anti-land invasion, or Red Ants.
3. If they hide their names, write down or take photos of their vehicle registration numbers.
4. Contact the **Legal Support Hotline**, a public interest legal organisation, a private lawyer, or your local ward councillor for help.

## YOU CAN GET FREE LEGAL ASSISTANCE DURING THE LOCKDOWN FROM THE PUBLIC INTEREST LEGAL SUPPORT HOTLINE.

If your rights are being violated during the lockdown period you can get **free legal assistance** from one of South Africa's public interest legal organisations.

**CALL THE HOTLINE ON  
+27 66 076 8845**



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