

Statutory Instrument 676 of 1983.

Commercial Premises (Rent) Regulations, 1983

SIs. 676/1983, 264/2001, 135/2004, 109/2006.

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IT is hereby notified that the Minister of Trade and Commerce has, in terms of section 5 of the Commercial Premises (Lease Control) Act, 1983, made the following regulations:—

PRELIMINARY

1. Title and operation

- (1) These regulations may be cited as the Commercial Premises (Rent) Regulations, 1983.
- (2) These regulations shall come into operation on the 1st January, 1984.

2. Application

(1) Subject to the provisions of subsection (2), these regulations shall apply only to commercial premises situated within—

- (a) an area for which a municipal or town council has been established;
- (b) any part of the area of a rural council which is a designated area in terms of the Rural Councils Act [*Chapter 211*];
- (c) an area set aside or deemed to have been set aside as a township in terms of the Communal Land Act, 1982;
- (d) a local government area as defined in the Urban Councils Act [*Chapter 214*].

(2) These regulations shall not apply to the letting of commercial premises by the State or a municipal, town, rural or district council or a local board.

(3) These regulations shall apply whether the lease concerned was entered into before, on or after the date of commencement of the regulations.

3. Interpretation

(1) In these regulations—

“application” means an application made in terms of section 7;

“appropriate board”, in relation to commercial premises, means the board within whose area of jurisdiction the premises are situated;

“board” means a commercial and industrial rent board established by the Minister in terms of section 3 of the Act;

“commercial premises” means any premises or part thereof occupied under a lease for the purpose of carrying on therein any industry, business, trade or occupation, and includes any ground, parking-space, garage, outbuilding, workers’ quarters and other improvement let therewith;

“depreciated replacement value”, in relation to commercial premises, means the aggregate of the following— (a) the current cost of erecting the buildings, structures and improvements, less depreciation; and (b) the current market-value of the land let as part of the premises:

Provided that, in the case of commercial premises which form part of composite premises, the depreciated replacement value of the commercial premises shall be assessed proportionately;

“lease” means a written or unwritten lease;

“lessee”, in relation to commercial premises, includes any sublessee thereof;

“lessor”, in relation to commercial premises, includes the owner thereof, the person to whom the rent therefor is normally paid, a lessee who has sublet the premises or part thereof and any agent of the lessor;

“open market rental”, in relation to commercial premises, means a rental which is comparable with the rental agreed between a willing lessor and a willing lessee for comparable premises in a comparable location, taking into account any normal anticipated increases in rental during the period of the lease, the date at which such rental was agreed, the period of the lease and all other relevant terms and conditions of the lease;

“recurrent expenditure” means expenditure which is reasonable, regard being had to any or all of the following—

- (a) the amount expended by the lessor in supplying electric current, water, fuels sanitary and other services and amenities, and in meeting the cost of rates in respect of the premises;
- (b) the amount expended by the lessor in meeting insurance premiums in respect of the premises, their equipment, furniture and other contents;
- (c) the cost to the lessor in respect of maintenance and cleaning of the premises, their equipment, furniture and other contents;
- (d) the amount of collection charges;
- (e) the cost to the lessor in respect of the caretaking of the premises, their equipment and contents, and the upkeep of the grounds;
- (f) any amount expended by the lessor on the provision of furniture and equipment;
- (g) any other amount expended by the lessor in connexion with the letting of the premises;

“rent”, in relation to commercial premises, includes, in addition to the sums payable periodically by the lessee for use and occupation of the premises, any moneys which the lessee pays to or on behalf of the lessor in respect of the amenities, services, facilities and other things provided therewith by the lessor.

(2) For the purposes of these regulations, the identity of commercial premises shall not be regarded as having changed by reason of any change in the premises or in the amenities, services, facilities and other things provided therewith by the lessor.

PART I

BOARDS

4. Proceedings of boards

(1) The procedure followed by a board shall be as simple and informal as possible and the board shall act in such a manner as it deems best fitted to do substantial justice to the parties.

(2) The quorum of a board shall be determined by the Minister by notice in the *Gazette*.

(3) All questions or matters requiring a decision of a board may be decided by a majority vote at any meeting and in the Commercial Premises (Rent) Regulations, 1983 event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(4) The chairman of a board shall cause to be maintained such records of the proceedings of the board as he considers appropriate, and those records shall be kept and filed at the Ministry of Trade and Commerce.

(5) The Minister shall appoint an official in his Ministry to act as secretary to a board.

5. Powers of board to obtain information

(1) A board may, by notice given under the hand of its secretary, require any party to an application to produce, within a reasonable time, to be specified in the notice, such information as it considers relevant.

(2) A board may, by notice of not less than seven days, given under the hand of its secretary, summon any person—

- (a) who, in its opinion, may be able to give information which is relevant to an application; or
- (b) who it suspects or believes to have in his possession any book, document or thing which is relevant to an application; to appear before it at the place and time specified in the notice in order to give such information or produce such book, document or thing.

6. Powers of entry and inspection

Any member of a board shall be entitled, for the purpose of carrying out his duties, to enter and inspect any commercial premises to which an application relates or which are connected with an application at any reasonable time, after due notice to the lessor and lessee of such premises.

PART II

FAIRRENTS

7. Applications

- (1) A lessor may apply to the appropriate board for—
 - (a) the determination of a fair rent; or
 - (b) the variation of such a determination; in respect of commercial premises let by him.
- (2) A lessee may apply to the appropriate board for—
 - (a) the determination of a fair rent; or
 - (b) the variation of such a determination; in respect of commercial premises hired by him.
- (3) An application shall—
 - (a) be in writing and in duplicate;
 - (b) be submitted to the secretary of the appropriate board; (c) include the following information—
 - (i) the description and situation of the premises concerned; and
 - (ii) the name and postal address of the lessor; and
 - (iii) the name and postal address of the lessee; and
 - (iv) the existing rent; and
 - (v) a copy of the agreement of lease, if any;
 - (d) in the case of an application for the determination of a fair rent, include the following information, in addition to that mentioned in paragraph (c)—
 - (i) the rent which the applicant is requesting the board to fix as the fair rent of the premises concerned;
 - (ii) details of the premises concerned and the amenities, services, facilities and other things provided by the lessor;
 - (e) in the case of an application for the variation of a determination of a fair rent, include, in addition to the information mentioned in paragraph (c), details of the determination and the variation thereof requested by the applicant;
 - (f) be accompanied by the written representations of the applicant, in duplicate, in support of his request, and shall state whether or not he wishes to be heard in person or through his legal representative;
 - (g) include such other information as the board may require or the applicant may wish to place before the board;
 - (h) be accompanied by a fee of twenty-five dollars:

Provided that, if the secretary of the board requires more than two copies of the application or the written representations of the applicant, the applicant shall furnish such number of copies as the secretary may direct.

8. Procedure on receipt of application

Upon receipt of an application, the secretary of a board shall serve written notice thereof on the lessor or lessee, as the case may be, affected thereby, which notice shall—

- (a) be accompanied by a copy of the application and the representations of the applicant in support thereof; and
- (b) require the lessor or lessee upon whom it is served to submit, in writing, any representations which he may wish to make as to why the application should not be granted, to the secretary, within a reasonable period, to be specified in such notice, and to state whether or not he wishes to be heard in person or through his legal representative.

9. Consideration of application

(1) Where a lessor or lessee upon whom a notice is served in terms of section 8 fails to submit written representations within the period allowed, the board concerned shall forthwith—

- (a) in the case of an application for the determination of a fair rent, fix as a fair rent for the commercial premises concerned the rent requested by the applicant;
- (b) in the case of an application for the variation of a determination of a fair rent—
 - (i) grant the application, if grounds warranting the variation are disclosed therein; or
 - (ii) dismiss the application if no such grounds are disclosed therein.

(2) Where written representations referred to in paragraph (b) of section 8 have been received within the period allowed, the board shall—

- (a) if no request for an oral hearing has been made, forthwith consider the application in accordance with the provisions of this Part;
- (b) if a request for, an oral hearing has been made, consider the application in accordance with the provisions of this Part at a time and place fixed by the chairman of the board and notified by the secretary of the board to the parties concerned:

Provided that, in the case of an application for the variation of a determination of a fair rent, if the board is satisfied that the application fails to disclose any ground warranting a variation it may refuse to consider the application, which shall thereupon be dismissed.

(3) After consideration of an application in terms of subsection (2), the board shall— (a) in the case of an application for the determination of a fair rent, make such determination; (b) in the case of an application for the variation of such a determination—

- (i) grant a variation of the determination; or (ii) dismiss the application.

10. Determination of fair rent

(1) A board shall fix as the fair rent of commercial premises—

- (a) a rent which will provide the lessor with a reasonable return on the depreciated replacement value of the premises, after allowing for recurrent expenditure by the lessor in respect of the premises; or
- (b) the open market rental; whichever is the lower: Provided that—
 - (i) where the rent of the premises has been agreed between the parties, and the board is satisfied that no alteration of the agreement is justified, the board shall fix as the fair rent the rent so agreed;
 - (ii) where, in the circumstances of any case it is not possible to have regard to any open market rental, and the board has not acted in terms of proviso (i), the board shall fix the fair rent in terms of paragraph (a).

(2) In fixing a fair rent for commercial premises, a board may specify different rents for different periods during the currency of the lease concerned.

(3) Where an application relates to commercial premises let by a lessee to a sublessee and the amenities, services, facilities and other things provided therewith by the lessee for the sublessee are materially different from the amenities, services, facilities and other things provided therewith by the lessor for the lessee, the board concerned shall have due regard thereto and, in such circumstances, may, in any determination made by it, specify different fair rents in respect of the premises as let to the lessee and the premises as let to the sublessee.

11. Variation of determination

A board shall not grant an application for the variation of a determination of a fair rent unless—

- (a) a material or substantial change has occurred, or will occur, in the premises concerned or in the amenities, services, facilities and other things provided therewith; or
- (b) a material or substantial change has occurred, or will occur, in the recurrent expenditure of the lessor; or
- (c) the true facts were not placed before the board at the proceedings resulting in such determination and the failure to do so was not attributable to the fault of the applicant for the variation of the determination; or (d) such other circumstances exist as justify such variation.

12. Revocation of determination or variation

Where a board has acted in terms of paragraph (a), or subparagraph (i) of paragraph (b), of subsection (1) of section 9, the party in default may apply to the board, not later than one month after he has obtained knowledge of the board's decision, for the revocation of the determination or variation, as the case may be, and the board may, on good cause shown and after giving the other party concerned an opportunity to make written representations, grant such application.

13. Validity of determination or variation

(1) Subject to the provisions of subsection (2), a board shall specify the date from which the determination of a fair rent made, or the variation of such a determination granted, by it shall have effect which shall not be a date prior to the date on which the application for such determination or variation, as the case may be, was received by the secretary of the board.

(2) Where a board determines as a fair rent in respect of commercial premises—

- (a) a rent which is lower than that payable in respect of those premises on the date of commencement of these regulations, and the application for the determination was received by the secretary of the board within two months of such date, the determination shall have effect from such date;
- (b) a rent which is higher than that payable in respect of those premises in terms of a subsisting lease, the earliest day from which the determination may have effect shall be the day following that on which such lease expires, whether by the effluxion of time or in consequence of notice duly given by the lessor:

Provided that the provisions of this paragraph shall not apply to the case where the lessee is a statutory tenant in terms of Part IV.

(3) The determination of a fair rent in respect of commercial premises, as varied from time to time in terms of this Part, shall remain in force—

- (a) where the premises are let on the date on which the determination is made or takes effect, whichever is the later, while the lessee in occupation on that date remains in occupation;
- (b) where the premises are not let on the date on which the determination is made or takes effect, whichever is the later, while the lessee to whom they are first let thereafter remains in occupation.

14. Notification of decisions of board

The secretary of a board shall—

- (a) give written notification to the parties concerned of any decision of the board in terms of section 9, 12 or 28; and
- (b) where the determination of a fair rent has been made, or the variation of such a determination has been granted by the board, send with such notification, free of charge, details of such determination or variation, as the case may be.

15. Report of board's reasons

(1) Within fourteen days of the receipt of a notification in terms of section 14, a lessor or lessee may, in writing, and on payment of a fee of five million dollars, request the secretary of the board concerned to furnish him with a report by the chairman of the board setting out the facts, findings and reasons of the board in relation to the decision concerned.

[Subsection amended by s.i 109 of 2006]

(2) On receipt of a request duly made in terms of subsection (1), the secretary shall forthwith inform the chairman of the request and the chairman shall forthwith prepare a report, which shall be signed by him and sent to the person who made the request.

(3) The lessor or lessee, as the case may be shall be deemed to have received notification given in terms of section 14 within four days of its dispatch by the secretary.

16. Details of determination or variation

Details of a determination of a fair rent made, or a variation of such a determination granted, by a board may be obtained by any person who satisfies the secretary of the board that he has a genuine interest in such details, from the secretary, on payment of a fee of ten dollars.

17. Notice of determination to subsequent lessor

The lessor of commercial premises shall give written notice to any person who immediately succeeds him as lessor of the premises, within seven days of the date on which such person succeeds him, of the existence by any determination of a fair rent, as varied from time to time in terms of this Part, which is in force in respect of the premises. PART III

PROHIBITED PAYMENTS

18. Excess rent

No lessor of commercial premises in respect of which a determination of a fair rent is in force shall require or permit the lessee to pay in respect of those premises a rent in excess of that fixed by such determination, as varied from time to time in terms of Part II.

19. Payment of bonus, premium et cetera

No lessor shall, in respect of commercial premises let or to be let by him, require or permit the lessee or prospective lessee of the premises to pay, in consideration of the grant, continuation or renewal of the lease concerned, any bonus, premium or other like sum in addition to the rent, or any amount for negotiating the lease.

20. Refund on deposits.

No lessor who has received a deposit in consideration of the grant, continuation or renewal of a lease of commercial premises shall retain such deposit for more than fourteen days from the date on which the lessee from whom it was received vacates the premises concerned, unless he has, within such period, given written notice to such lessee of any loss to himself, or damage to the premises, for which the lessee is liable.

21. Recovery of payments in excess of fair rent or in contravention of section 19

(1) Where any rent in excess of that determined as a fair rent, as varied from time to time, in terms of Part II has been paid by the lessee for any commercial premises, the lessee who made the payment may recover from the lessor who received the payment the amount by which the rent so paid exceeds the rent so determined.

(2) Where any payment has been made in contravention of the provisions of section 19, the lessee who made the payment may recover from the lessor who received the payment the amount thereof.

PART IV

22. Limitation on ejectment

(1) For the purposes of subsection (2), “rent due”, in relation to commercial premises, means—

(a) where the determination of a fair rent in terms of Part II is in force in respect of premises, the rent fixed thereby, as varied from time to time in terms of that Part; or (b) in any other case, the rent due in terms of the lease.

(2) No order for the recovery of possession of commercial premises or for the ejectment of a lessee therefrom which is based on the fact of the lease having expired, either by the effluxion of time or in consequence of notice duly given by the lessor, shall be made by a court, so long as the lessee— (a) continues to pay the rent due, within seven days of due date; and

(b) performs the other conditions of the lease; unless the court is satisfied that the lessor has good and sufficient grounds for requiring such order other than that—

- (i) the lessee has declined to agree to an increase in rent; or
- (ii) the lessor wishes to lease the premises to some other person.

23. Rights and duties of statutory tenant

A lessee who, by virtue of section 22, retains possession of any commercial premises shall, so long as he retains possession, observe and be entitled to the benefit of all the terms and conditions of the original contract of lease, so far as the same are consistent with the provisions of these regulations, and shall be entitled to give up possession of the premises only on giving such notice as would have been required under the contract of lease or, if no notice would have been so required, on giving reasonable notice:

Provided that, notwithstanding anything contained in the contract of lease, a lessor who obtains an order for recovery of possession of the premises or for the ejectment of a lessee retaining possession as aforesaid shall not be required to give any notice to vacate to the lessee.

24. Illegal removal of property by lessor or obstruction in use of commercial premises

No lessor of commercial premises shall—

- (a) without a lessee’s consent and without reasonable excuse, cause the removal from the premises of any property belonging to the lessee; or
- (b) prevent a lessee from using or occupying the premises; unless he has obtained an order of court for the removal of such property, if appropriate, or for the recovery of possession of the premises or the ejectment of the lessee therefrom.

PART V

APPEALS AGAINST DECISIONS OF BOARDS

25. Noting of appeal

(1) Any lessor or lessee who is aggrieved by a decision of a board may—

- (a) within fourteen days of the receipt of a report furnished in terms of section 15;
- (b) where he has not requested such a report, within thirty days of the receipt of notification of the decision of the board; or within such extended period as may be allowed by the President of the Administrative Court, on good cause shown by the person concerned, appeal against that decision to the Administrative Court by lodging a written notice of appeal, in duplicate, with the secretary of the board:

Provided that, if the secretary requires more than two copies of the notice of appeal, the appellant shall lodge such number of copies of the notice as the secretary may direct.

(2) A notice of appeal shall state clearly and specifically the grounds of appeal, and, unless payment has already been made in terms of section 15, shall be accompanied by a fee of five million dollars.

[Subsection amended by s.i 109 of 2006]

(3) On receipt of a notice of appeal and, where appropriate, the fee prescribed by subsection (2), the secretary of the board shall forthwith transmit to the Registrar of the Administrative Court—

- (a) a report by the chairman of the board setting out the facts, findings and reasons of the board in relation to the decision appealed against; and
- (b) the notice of appeal; and
- (c) the record of the proceedings, where the board has exercised its powers in terms of subsection (2) of section 5.

(4) The lessor or lessee, as the case may be, shall be deemed to have received—

- (a) the report furnished in terms of section 15;

(b) notification of the decision of the board; within four days of its dispatch by the secretary.

26. Preparation for appeal

On receipt of the documents referred to in subsection (3) of section 25, the Registrar of the Administrative Court shall—

- (a) notify the President of the Administrative Court, who shall fix a day for the hearing of the appeal; and
- (b) not later than fourteen days before the day of the hearing—
 - (i) serve written notice on the appellant and respondent of the day, time and place of the hearing and invite their attendance at the hearing; and
 - (ii) provide the respondent with a copy of the notice of appeal; and
 - (iii) provide the appellant and respondent with a copy of the report of the chairman of the board:

Provided that, if the appellant or respondent has obtained a report in terms of section 15 which does not differ from such report, it shall not be necessary to provide him with a copy of such report.

27. Powers of Administrative Court

(1) An appeal to the Administrative Court in terms of this Part shall be an appeal on the record, but the Administrative Court shall, in respect of any such appeal, have all the powers conferred upon it in terms of the Administrative Court Act, 1979, including the power to summon witnesses and to call for the production of books and documents.

(2) The Administrative Court may, subject to the provisions of these regulations—

- (a) confirm, vary or reverse the decision of the board; or
- (b) take such other course as seems to it to be best calculated to lead to the just, prompt and inexpensive settlement of the proceedings.

(3) A decision of the Administrative Court under this section shall, for all purposes, be deemed to be the decision of the board against whose decision the appeal was lodged.

28. Rent pending appeal

Where an appeal has been lodged in terms of this Part, either of the parties concerned may, upon notice being given to the other party, apply to the board concerned for any direction or order relating to the payment of the rent concerned pending the determination of the appeal, and the board may make such direction or give such order as it deems fair and just in the circumstances.

PART VI

EVASION OF REGULATIONS

29. Agreement to evade regulations void

Any agreement by which any person purports to limit his right to proceed under these regulations for the determination of a fair rent or the variation of such a determination, or to limit or affect any other rights to which he would be entitled under these regulations, shall be void.

30. Threats prohibited

No person shall, by threat, endeavour to dissuade or prevent any other person from making or prosecuting any application or appeal under these regulations, or from appearing before a board in order to give information thereto.

31. Evasion of regulations prohibited

No person shall, in consideration of the grant, continuation or renewal of the lease of commercial premises, impose or accept any condition or enter into or carry out any agreement which has the effect of defeating the objects of these regulations.

PART VII

OFFENCES

32. Offences

Any person who—

- (a) contravenes the provisions of section 18, 19, 20, 24, 30 or 31; or
- (b) having been required to give information in terms of subsection (1) of section 5, without reasonable cause fails to give such information within the period allowed; or
- (c) after being summoned to appear before a board in terms of subsection (2) of section 5—
 - (i) fails, without sufficient cause, to attend at the time and place specified in the notice to him to do so; or

- (ii) fails to remain in attendance until excused by the board; or
- (iii) fails to produce any book, document or thing in his possession or custody or under his control when lawfully required to do so; or
- (iv) fails to answer fully and satisfactorily, to the best of his knowledge and belief, any question lawfully put to him; or
- (v) makes any false statement knowing it to be false or not knowing or believing it to be true; or
- (d) in any proceedings before a board, wilfully insults any member of the board or wilfully interrupts the proceedings or otherwise misbehaves; or
- (e) obstructs or hinders a member of a board conducting an inspection in terms of section 6; shall be guilty of an offence.

33. Penalties

Any person who is convicted section 32 shall be liable to a fine not dollars or to imprisonment for a period months or to both such fine, and such imprisonment.

34. Refund of illegal payment

(1) A court convicting a 18, 19 or 20 may, in addition to any in terms of section 33, order such concerned the appropriate amount deposit, as the case may be.

(2) An order for the refund section (1) shall have the effect of a civil court in favour of the lessee concerned it were such judgment.

PART VIII

GENERAL

35. Inspection and taking copies of local authority documents

The person having the custody of the valuation rolls, rate- books or other records, plans or documents of a municipal, town, rural or district council or a local board, which are considered by a board to be relevant to an application before it, shall, free of charge—

- (a) allow any person authorized by the board—
 - (i) to inspect the said rolls, books, records, plans or documents; and
 - (ii) to take copies thereof or extracts therefrom; and
- (b) if satisfied that such a copy or extract is a true copy or extract, at the request of the person referred to in paragraph (a), certify the copy or extract accordingly.

36. The serving of notice by post

Where notice is required to be given to any person in terms of these regulations, and such notice is given by post, it shall be deemed, until the contrary is proven, to have been effected at ten o'clock in the forenoon on the second day after the post-marked date upon the receipt for registration.

37. Fees

The payment of any fee prescribed by these regulations shall be effected by affixing a revenue-stamp for the requisite amount on the application.