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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NUMBER:2024-037824

- (1) REPORTABLE: YES / ~~NO~~
- (2) OF INTEREST TO OTHER JUDGES: YES / ~~NO~~
- (3) REVISED: ~~YES~~ / NO

24 November 2025

In the matter between:

ERF 0[...] MALANSHOF RANDBURG CC

PLAINTIFF

and

ALBERTINA TSHISIKULE

FIRST DEFENDANT

TSHIPULISO BARNABAS TSHISIKULE

SECOND DEFENDANT

Heard: 20 October 2025

Delivered: 24 November 2025

JUDGMENT

WINDELL J:

Introduction

[1] This is an application for summary judgment brought by the plaintiff, Erf 0[...] Malanshof Randburg CC, against the two defendants for payment of arrear rental and holding-over damages arising from their occupation of residential premises in Malanshof, Randburg (“the Property”).

[2] The plaintiff’s claim is founded on a written lease agreement concluded between the parties in July 2009, which was renewed in writing on several occasions, the final renewal terminating on 31 July 2016. After the expiry of the written renewals, the defendants remained in occupation with the plaintiff’s tacit consent and continued to make rental payments. The plaintiff contends that, in these circumstances, section 5(5) of the Rental Housing Act 50 of 1999 applied and that a periodic lease arose by operation of law.

[3] On the plaintiff’s version, the lease thus continued to govern the parties’ relationship until it was cancelled on 24 May 2022 for persistent non-payment. The defendants nonetheless remained in occupation until 30 October 2023, giving rise to the plaintiff’s claim for holding-over damages. These allegations are set out in detail in the particulars of claim.

[4] The plaintiff avers that the defendants are indebted to it in the following amounts relevant to this application: R130 894.86 in arrear rental and R310 992.49 in respect of

holding-over damages. A separate claim for damage to the property forms part of the action but does not fall within the ambit of this application.

[5] The defendants oppose the application on several grounds, including non-joinder, the alleged absence of a valid lease beyond 2016, and an asserted oral agreement that allegedly permitted them to remain in the property without rental. Their full submissions appear from their heads of argument.

[6] The test under Uniform Rule 32 is well established. The plaintiff must verify the cause of action and demonstrate that the defence as pleaded does not raise an issue for trial. The defendant, in turn, must disclose the nature and grounds of the defence with sufficient particularity so that, if proved at trial, it would constitute a defence in law. Bald, sketchy, or inherently improbable allegations do not suffice.¹

Non-joinder

[7] The defendants submit that the plaintiff's former estate agent, Fire Ring Trading 17 (Pty) Ltd t/a Seeff Properties ("Seeff"), ought to have been joined because clause 24.1 of the lease contemplated that any renewal of the agreement would be drafted by Seeff. This submission misconceives both the purpose of the clause and the legal test for non-joinder.

¹ See *Maharaj v Barclays National Bank* 1976 (1) SA418 (A) at 423F-H; *Joob Joob Investments (Pty) Ltd v Stocks Mavundla Zek Joint Venture* 2009 (5) SA 1 (SCA) para [32], and *Breytenbach v Fiat SA (Edms) Bpk* 1976 (2) SA 226 (T).

[8] A party is necessary only if it holds a direct and substantial legal interest in the order that the court may make—meaning an interest that may be prejudicially affected by the relief granted. The plaintiff claims nothing against Seeff, nor does it seek any order that would alter Seeff's rights or impose obligations upon it. The action concerns the defendants' liability to the plaintiff for rental and holding-over damages. The agent played no role in the creation of those obligations and bears neither rights nor responsibilities under the claim now before the court. The fact that Seeff may have drafted prior lease renewals, or may have been expected to do so in future, does not vest it with an interest in the monetary relief sought.

[9] As the plaintiff correctly submits, joinder is required only where the order sought will materially affect the legal interests of the absent party.² That is not so in this matter. Seeff's absence does not render the proceedings defective and provides no foundation for a triable issue.

Absence of a written lease

[10] The defendants argue that because no written renewal of the lease was executed after 2016, the lease lapsed and no contractual relationship existed thereafter. This submission cannot be sustained. It overlooks the clear wording and operation of section 5(5) of the Rental Housing Act, which regulates precisely the situation where a tenant remains in occupation after the expiry of a fixed-term lease. The provision stipulates that if, upon expiry, the tenant remains in occupation with the landlord's express or tacit consent and no further written lease is concluded, a periodic lease is

² *Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 627 (A) p657; *Bowring NO v Vrededorp Properties CC and Another* 2007 (5) SA 391 (SCA) para 21; *Myeni v Organisation Undoing Tax Abuse* NPC 2019 JDR 2599 (GP) para 66.

deemed to arise by operation of law, on the same terms and conditions as the expired lease, subject only to a one-month notice period for termination.

[11] In *Sharma v Hirschowitz*³ the court explained that the purpose of section 5(5) is to provide certainty and to avoid the disputes that commonly arise when the terms of a continued occupation are not reduced to writing. The effect is that the statute—not clause 24.1 of the lease, nor the conduct of the parties—determines the legal position once a written lease expires and the tenant remains in occupation.

[12] In this matter, the defendants continued to occupy the premises for several years after July 2016. They did so openly, without objection from the plaintiff, and continued to make payments towards rental and utilities. Their occupation was therefore clearly with the plaintiff's tacit consent, triggering the statutory deeming provision. The defendants' assertion that only a written renewal drafted by Seeff could have revived or extended the lease is inconsistent with section 5(5), which overrides contractual mechanisms for renewal and imports the terms of the expired lease by force of law.

[13] A periodic lease therefore arose *ex lege*, and the defendants remained bound by the payment obligations contained in the original lease. In these circumstances, the plaintiff was fully entitled to claim rental arrears and, following cancellation in May 2022, to recover holding-over damages. The defence based on the absence of a written renewal accordingly has no merit and does not raise a triable issue.

Alleged oral agreement

³ *Sharma v Hirschowitz and Another* 2020 (3) SA 285 (GJ) para 51.

[14] The defendants further rely on an alleged oral agreement concluded in 2021 with the landlord personally, in terms of which they say they were permitted to remain in the property without paying rent “until they got back on their feet”, save for occasional contributions towards water charges. This defence suffers from several difficulties. First, it is pleaded in the most skeletal form. Rule 18(6) requires a party relying on an oral agreement to set out the date, place and identity of the persons who concluded it. None of these particulars are disclosed. The pleading therefore falls short at the threshold level.

[15] Secondly, the allegation is inherently improbable. The defendants assert that, after many years of occupation and arrears, the landlord agreed to allow them to continue residing in the property indefinitely without rental. Such an arrangement would be highly unusual in the context of a commercial residential letting and is inconsistent with the surrounding circumstances, including the plaintiff’s ongoing demands for payment and the eventual eviction order granted in 2023. It is improbable in the extreme that the plaintiff would have instituted and pursued eviction proceedings if it had indeed agreed that the defendants could remain rent-free.

[16] Thirdly, the alleged oral agreement is legally incompatible with the lease. Clause 19.3 of the written lease contains a Shifren-type non-variation clause, stipulating that no addition to or variation of the agreement shall be of any force unless reduced to writing and signed by both parties. The purpose of such clauses, as explained by the Supreme Court of Appeal in *Spring Forest Trading CC v Wilberry (Pty) Ltd*,⁴ is to ensure certainty

⁴ *Spring Forest Trading CC v Wilberry (Pty) Ltd t/a Ecowash and Another* 2015 (2) SA 118 (SCA) para 13. See also *SA Sentrale Ko-op Graanmaatskappy Bpk v Shifren en Andere* 1964 (4) SA 760 (A) p766G.

and to preclude precisely the type of dispute that now arises. The clause is binding, and any alleged oral variation is legally ineffective.

[17] Finally, the defence cannot stand in the face of section 5(5) of the Rental Housing Act, which deems a periodic lease to arise on the same terms as the expired lease unless a new written lease is concluded. No such written agreement is alleged. The statute therefore imports the original terms, including the obligation to pay rental. An informal, undocumented understanding of the kind alleged cannot override either a statutory deeming provision or a non-variation clause.

[18] In light of these considerations—procedural, factual, and legal—the alleged oral agreement does not raise a bona fide or triable defence. It does not disturb the plaintiff's entitlement to summary judgment.

Conclusion

[19] None of the defendants' defences meet the threshold for resisting summary judgment. The supposed non-joinder is bad in law; the statutory continuation of the lease renders the "no written renewal" defence untenable; and the alleged oral agreement is both factually improbable and legally incompetent. The defendants' own heads confirm that their central position is that no lease existed after 2016 and that an alternative oral arrangement governed the relationship.

[20] The plaintiff, on the other hand, has established its claims for arrear rental and holding-over damages on the papers. There is no genuine dispute requiring ventilation at trial.

[21] In the result the following order is made:

1. Summary judgment is granted in favour of the plaintiff against the defendants, jointly and severally, the one paying the other to be absolved, for:

- 1.1 Payment of the amount of R130 894.86 in respect of arrear rental.

- 1.2 Interest on the amount at the contractual rate of 2% from per month from
1 June 2022 to date of final payment

- 1.3 Payment of the amount of R310 992.49 in respect of holding over
damages.

- 1.4 Interest on the amount at the contractual rate of 2% from per month from
30 October 2023 to date of final payment

- 1.5 Costs on an attorney client scale.

L WINDELL

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, JOHANNESBURG

Delivered: This judgement was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal

representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand down is deemed to be 24 November 2025.

Appearances

For the plaintiff:	Ms Beata Wierzbicka
Instructed by:	Fairbridges Wertheim Becker Attorneys
For the defendants:	Mr Makgopo
Instructed by:	Madima Attorneys
Date of Hearing:	20 October 2025
Date of Judgment:	24 November 2025