

Have provincial Rental Housing Tribunals acting *ultra vires* since May 13 2008?

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When a minister is given powers in an enabling Act of parliament to form a law, a delegated responsibility follows that result in a subordinate legislation such as a regulation or a byelaw. Regulations prescribe forms and lays down rules but it cannot be crafted to compensate or “rectify” or supersede the Act. Regulations are therefore pivotal to ensuring a just and equitable resolution to a dispute. Magistrates’ Courts, the High Courts, Supreme Court of Appeal, the Constitutional Court, Small Claims Courts, among others, all have regulations with a set of rules and prescribed forms. The public, legal practitioners, magistrates, judges, commissioners and staff are informed and need to be acquainted with the requirements of the rules of law. The Sectional Titles Act regulates management and conduct rules (Annexure 8 and 9 respectively).

The Rental Housing Amendment Act 2007 [“the Act”] also requires regulations and the national Minister of housing must make regulations relating to unfair practices and procedures (section 15)¹.

¹ Regulations 15. (1) The Minister must, after consultation with the standing or portfolio on housing and every MEC, by notice in the *Gazette*, make regulations relating to—

- (a) anything which may or must be prescribed under Chapter 4;
- (b) the procedures and manner in which the proceedings of the Tribunal must be conducted;
- (c) the forms and certificates to be used;
- (d) the notices to be given by the Tribunal in the performance of its functions, powers and duties;

Read with section 13(6) the Tribunal at the conclusion of a hearing must have regard to unfair practices regulations. The Rental Housing Tribunals do not have discretionary powers and it must also rely on common law, law of contract, the Constitution of the Republic of South Africa, and other relevant legislation not specifically excluded or changed by the Act.

Let us for argument sake look at a landlord who is granted an attachment order that allows him through the sheriff to seize the personal property of his

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- (e) the functions, powers and duties of inspectors for the purpose of carrying out the provisions of this Act;
 - (f) unfair practices, which, amongst other things may relate to –
 - (i) the changing of locks; (ii) deposits; (iii) damage to property; (iv) demolitions and conversions; (v) forced entry and obstruction of entry; (vi) House Rules, subject to the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), where applicable; (vii) intimidation; (viii) issuing of receipts; (ix) tenants committees; (x) municipal services; (xi) nuisances; (xii) overcrowding and health matters; (xiii) tenant activities; (xiv) maintenance; (xv) reconstruction or refurbishment work; or
 - (g) anything which is necessary to prescribe in order to achieve the purposes of this Act.

(2) At least one month prior to the publication of any regulations contemplated in subsection (1), the Minister must by notice in the *Gazette* set out the Minister's intention to publish regulations in the form of a Schedule forming part of such notice setting out the proposed regulations, and inviting interested persons to comment on the said regulations or make any representations which they may wish to make in regard thereto.

tenant for rental arrears of R20, 000.00. What procedure must the landlord follow to give effect to the lien or hypothec? Must he present the Tribunal with proof that he placed the tenant on terms, giving her adequate time to settle the debt? How does he make an application to the Tribunal? What if the landlord was informed that the property to be seized did not belong to the tenant and a third party who genuinely owns the property wants the attachment order revoked (interpleader proceedings)?

Let us take the case of a tenant who is granted an urgent order to have the electricity supply reconnected. The tenant makes an urgent (*ex parte*) application and is granted an interim ruling. The ruling also details the option the defendant has to oppose the order that was granted (*rule nisi*) in her absence. What rules does the defendant refer to and how does she anticipate the date? How does the general public and other interested persons / parties have access to this particular ruling to ascertain whether it would relate to their specific case?

Regulations map out the route a party needs to follow and ensure that members in a Tribunal and across the provincial Tribunals follow standardised rules. Left without regulations, rules are thumb sucked and parties are prejudiced by arbitrary decisions. Members, meaning well and working under enormous challenges, end up becoming advocates for a cause, when they are, in fact, required to apply the law to the evidence presented in a case to arrive at a just, practical and equitable solution.

The critical position is that there are no regulations in force since the amendments were passed into law on May 13, 2008.

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