

Rental Housing tribunal regulations

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There are at present seven functional provincial Rental Housing Tribunals (RHTs) of which the KwaZulu-Natal Tribunal *appears* not to have regulations. The Legal Resources Centre brought an application before the Durban High Court on behalf of two tenants who were aggrieved at the RHT's ruling of a cost order against them, directing them to pay their landlord's legal costs. They challenged the KwaZulu-Natal RHT for allegedly operating without regulations. The order sought was that all the rulings of the RHT be declared null and void and the establishment of the RHT be set aside.

Since the case is *sub judice* this article will examine briefly the role of regulations within the context of the Rental Housing Act 50 of 1999 (RHA) and the opposing views regarding the need for regulations.

Generally, regulations are subordinate legislation issued in terms of enabling statutes and are needed to clarify key definitions and establish how the State and statutory bodies will implement the laws. It deals with enforcement and penalty provisions and may have rules or provisions for the establishment of these. Sometimes regulations contain rules that are mandatory like Annexures 8 and 9 to the regulations of the Sectional Titles Act 95 of 1986. Here, the prescribed Management and Conduct rules enable the body corporate to administer, manage and control the scheme.

If the owner or prospective buyer wants to know how meetings are conducted, what powers are given to the trustees and what is expected of them in the administration of the scheme, Annexure 8 would provide such information. Annexure 9 informs the owner or prospective buyer what the do's and don'ts are in respect of the common property as well as the section/ unit owned. For example, an owner cannot keep pets unless the trustees have consented to it in writing: "An owner or occupier of a section shall not, without the consent in writing of the trustees, which approval may not unreasonably be withheld, keep any animal, reptile or bird in a section or on the common property (section 1)."

In terms of legal practice, an attorney who is instructed to note an appeal knows where to find the rules and procedure. Court processes, how to access court records, the costs involved and where payment is to be made, may seem insignificant and second nature after a time. A counsel, who is briefed to bring an *ex parte* application, seeking urgent relief for her client, must be acquainted with the basic processes and procedures. Can a spoliation application be made to the magistrate court for the restoration of the water supply to an apartment? What is the role of the clerk of the court, how must proceedings take place and what is the service period for summons, opposing affidavits and other processes?

RHTs have a judicial function and the proceedings are a combination of adversarial and inquisitorial approach, at least in practice, but nowhere to be found in the RHA.

The RHA provides for a broad framework to govern tenant-landlord relationships of residential dwellings. In having modified certain aspects of the common law and law of contract, it conferred “exclusive jurisdiction” to the RHTs through the concept of “unfair practice”. It is defined in the RHA as follows: “unfair practice unreasonably prejudicing the rights or interests of a tenant or a landlord; prescribed’ means prescribed by regulation by the MEC, by notice in the *Gazette*; ‘regulation” means a regulation made in terms of section 15.” Herein lays the crux of the dilemma and the ensuing debate.

Section 15 contains the word “may”.

“15(1) The MEC may, after consultation with the relevant standing or portfolio committee of the Provincial Legislature responsible for housing matters in the province, by notice in the *Gazette*, make regulations relating to-

- (a) anything which may or must be prescribed under Chapter 4;
- (b) 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;
- (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) eviction;
 - (vi) forced entry and obstruction of entry;
 - (vii) House Rules, subject to the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986) where applicable;
 - (viii) intimidation;
 - (ix) issuing of receipts;
 - (x) tenants committees;
 - (xi) municipal services;
 - (xii) nuisances;
 - (xiii) overcrowding and health matters;
 - (xiv) tenant activities;
 - (xv) maintenance;
 - (xvi) 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 MEC must by notice in the *Gazette* set out the MEC’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.”

Those who believe that regulations are not needed, place emphasis on section 15, arguing that the MEC is not obliged to promulgate regulations. They either gloss over or conflate into section 15 of the following provisions of the RHA:-

“section 13(4) Where a Tribunal, at the conclusion of a hearing in terms of paragraph (d) of subsection (2) is of the view that an unfair practice exists, it may-

- (a) rule that any person must comply with a provision of the regulations relating to unfair practices;...

section 13(6) When acting in terms of subsection (4), the Tribunal must have regard to-

- (a) the regulations in respect of unfair practices;
- (b) the common law to the extent that any particular matter is not specifically addresses in the regulations or a lease;”

The NATIONAL Ministry of Housing published standard regulations that were to be used once a province established the RHT. The provincial Minister of housing could amend if it she or he deemed it necessary. The problem with the national regulations is that it did not deal with procedural and unfair practice and certain RHTs subsequently amended the regulations. The Western Cape RHT now has Procedural and Staff Duties Regulations and Unfair Practices Regulations. There has been considerable delay in the appointment of new members to the Gauteng RHT after the expiry of the term of office of the previous members. The MEC believes that the regulations need further fine-tuning to give enforcement powers that RHTs generally lack and once these are in place, she would proceed with the appointments.

The public needs to have access to information about the procedure followed during mediation or hearing; whether witnesses are allowed and who pays witness fees. How does one procure copies of RHT documents in a particular matter and the costs thereof. What are the rules that will govern the process of mediation and hearing? These are but just a few of the many matters that need to be regulated to protect the public from being at the whim of officials and even adjudicators/ commissioners.

The RHT must ensure a systematic, orderly, and predictable method for the resolution of a complaint lodged. Regulations are therefore an inseparable link to providing a just and equitable decision and ought to provide specific details about the procedure and rules to be followed. In addition, it ought to include the details/ categories of what comprises an unfair practice. Perhaps like the RHA, regulations need to be promulgated nationally to standardise unfair practices regulations, rules and procedures.

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Free State

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