

The Rental Housing Act and Provincial Rental Housing Tribunals'

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The Rental Housing Act 50 of 1999 (hereafter referred to as the RHA) became law on 1 August 2000. The RHA regulates the relationship of parties to a tenancy agreement. It informs tenant and landlord of residential dwellings about their rights, duties and responsibilities when they enter into or are about to conclude an oral (verbal) or written contract of lease (section 5). It further lays down ground rules, as it were, directing tenant and landlord how to conduct themselves, what they must do cannot do and the consequences of infringing the rights of a party. It has modified the common law in some instances 2. Contravening certain provisions of the RHA may lead to criminal prosecution (section 16).

PROVINCIAL RENTAL HOUSING TRIBUNAL (TRIBUNAL)

To give effect to the RHA, chapter 4 provides for the establishment of provincial Rental Housing Tribunals. While the MEC of Provincial Housing appoints between 3-5 members to serve a term of three years that may be extended to a further three years, a Tribunal is an independent quasi-judicial body. It is tasked with tenant-landlord matters and has exclusive jurisdiction on unfair practice 3.

Its ruling is deemed to be an order of a magistrate's court [section 12(13)].

PROCEDURE

After a complaint is lodged (in terms of

section 13) parties are informed (by way of summons) of the date on which the matter is to be mediated or heard. A summary of the nature of the complaint is provided to the respondent who is also given the opportunity of making a counter claim.

If it is a mediation, the mediator explains the process to be followed, that includes the signing of a *confidentiality agreement*, his/her role as an objective "negotiator" and the signing of a *mediation agreement* at the conclusion of a successful mediation. Should the mediation fail, the mediator refers the matter to the Tribunal for a hearing. The mediator fills in a mediation certificate indicating that the mediation was successful, failed or agreement was reached on certain aspects with the Tribunal required to adjudicate on the remaining issues.

At a hearing, at least three members must preside. Proceedings are recorded parties take an oath or an affirmation, lead evidence, cross-examine and in general, follow more or less formal court proceedings. However, the Tribunal has both an inquisitorial (like the small claims court) as well as an accusatorial approach. An inspection *in loco* may be held. The proceedings and approach may differ from

one provincial Tribunal to another. At the conclusion of a hearing, a ruling is made, either on the day of the hearing or soon thereafter. An aggrieved party may approach the High court within, its area of jurisdiction, to have the proceedings of the Tribunal reviewed (in terms of section 17).

A CASE BEFORE THE TRIBUNAL

The following case will illustrate the function of a Tribunal, from the point of entry (lodging a complaint) to its conclusion. Names of parties are fictitious.

Lockhart v Cele: The relationship between tenant and landlord often starts off on a friendly basis when they enter into a contract of lease. During the lease period or by the end of it, some relationships would have deteriorated to the point that outside intervention becomes necessary. Let us take the case of Lockhart who entered into a short-term written lease with Cele to rent her upmarket dwelling. He paid a deposit of R3 000 to her agent and a further R630 for the cost of the lease. The rental was R3 000 per month and the parties further agreed that the lease would be for a fixed period (six months) with either party required to give a written calendar month's notice to terminate the lease after the six-month period. Lockhart was adamant that he required the dwelling for six months only, from January to June. However, Lockhart took occupation two days before Christmas and paid R100 per day proportionate rental.

Up to the sixth month of the lease,

Lockhart, his partner Jenny and Cele and her husband Patrick had developed a good relationship. After the lease ran its six-month period, Lockhart continued to occupy the dwelling for another month or so. During this period, an anxious Cele wanted to know when he would be vacating the dwelling since she wanted to arrange for a new tenant to take occupation.

Lockhart was not sure because he was waiting for confirmation from an overseas company regarding a job opportunity. Eventually, he moved out on a Monday, the 3rd day of August. He was furious when he received a cheque of R1 500 two weeks later, being the refund of his deposit. A letter from Cele accompanied the cheque wherein she stated that she deducted R1 500 for the late vacant occupation of her dwelling that prejudiced her financially. She argued further that Lockhart was required to give a written calendar month's notice, which he failed to do. A receipt of R350 for repairs carried out was attached to her letter for alleged damage to the dwelling. She specified that the R1 500 included the cost of repairs, her acceptance of his three-day verbal notice and would therefore constitute a settlement in full. This settlement, however, was conditional on Lockhart appending his signature, indicating acceptance of such a settlement and to return the signed copy of the letter of acceptance to her within three days. Lockhart was incensed. He lodged a complaint with the provincial Rental Housing Tribunal regarding an unfair practice.

At mediation, parties could not reach a settlement. Lockhart rejected the offer of R1 500. The matter was thereafter set down for a hearing as a result of the failed mediation. Parties were acrimonious and hurled accusations of invasion of privacy, that the dwelling needed repairs, and so on. Cele said she was "generous" in her offer since she did not claim the actual proportionate rental due to her. She now wanted the Tribunal to consider the actual proportionate rental and, in addition to the R350 repair cost, other repair costs that she had willingly ignored.

After hearing evidence from both parties, the Tribunal gave its ruling. It was clear from the evidence that Lockhart had to vacate the dwelling not later than the last day of the sixth month, i.e. 31 July. Cele lost a tenant who wanted to move into the dwelling on the 1st day of August. Another tenant was eventually found during the course of the month that took occupation on the 18th of August. There was no dispute about this evidence.

Regarding the deposit, Cele, on evidence, conceded that the deposit paid to her agent was handed over to her. She was therefore liable for accrued interest that amounted to about R25.

The Tribunal found that Lockhart was liable for 17 days rental, three days for occupying the dwelling after the lease expired and had, in fact, terminated and 14 days for the period the dwelling was unoccupied. Cele's claims for damages were rejected because she did

not carry out an inspection of the dwelling with Lockhart before he took occupation, and failed to do so towards the end of the lease period as required by the RHA [sections 5(3) (e) and (f)]

The Tribunal's ruling awarded Cele a proportionate rental due to her. Lockhart was therefore legally responsible for R1 700. This meant that the actual refund of his deposit with the R25 accrued interest was R1 325.

Mediation provides a forum for parties to compromise. The "give and take" results in an agreement where both parties walk away as "winners". A hearing ends in a ruling (equivalent to a magistrate's court judgment) that usually has a "winner" and a "loser".

FOOTNOTES:

1. For a detailed discussion on the above refer to "Tenant and Landlord in South Africa: a guide to the rights, duties and responsibilities of tenant and landlord of residential dwellings" by Sayed4gbal Mohamed. Published by the Organisation of Civic Rights. Durban, 2004. (civicrights@occ.org.za)
2. Mukheibir. A (2000). The Effects of the Rental Housing Act on the Common Law of Landlord and Tenant. ()biter 2000
3. Thomas, PhJ (2000). The Rental Housing Act. *De Jure* 2:235

Mohamed, S. I. 'The Rental Housing Act and Provincial Rental Housing Tribunals.' In *LexisNexis Butterworths Property Law Digest*, 8 (3): 16-17. September 2004 Durban, South Africa.