

Dispute resolution procedure to be followed

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The provincial Rental Housing Tribunals are required to be impartial and this applies from the time of lodging a complaint or making enquiries. The complaint's clerk is there to assist a landlord or a tenant in completing a complaint form and advising about the procedures.

A complainant would be prejudiced as would the respondent if "justice" was meted out at the time of lodging a complaint. It is through the mediation process or a hearing that parties are given the opportunity to present their case. Sometimes, a tenant may have legal grounds for not fulfilling all the terms and conditions of a lease agreement.

Or, a landlord may be justified in issuing a notice to vacate due to a breach, but it is not for the complaint's clerk to decide the merits of the complaint. The Rental Housing Act 50 of 1999 empowers the Tribunal to decide if there is a case, in terms of section 13 (1): -

- (b) through its staff conduct such preliminary investigations as may be necessary to determine whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice;

- (c) where the Tribunal is of the view that there is a dispute contemplated in paragraph (b) and that such dispute may be resolved through mediation, appoint a mediator, which may be a member of the Tribunal, a member of staff or any person deemed fit and proper by the Tribunal, with a view to resolving the dispute;

- (d) where the Tribunal is of the view that the dispute is of such a nature that it cannot be resolved through mediation or where a mediator contemplated in paragraph (c) has issued a certificate to the effect that the parties are unable to resolve the dispute through mediation, conduct a hearing and, subject to this section, make such a ruling as it may consider just and fair in the circumstances.

It is also important that the relevant parties be cited correctly, with proper contact details. Often, tenants lodge complaints against the estate agent or the landlord's attorney who may not have the authority to act for the landlord. This leads to inconvenience and expenses in serving notice for a mediation or summons for a hearing, costs for a mediator or members and, also financial implications for the wrong party.