

# RENTAL HOUSING TRIBUNALS SERVING A JUDICIAL FUNCTION

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THE Rental Housing Tribunal in each province performs a judicial function that is evidenced by the constitutional guidelines and several fundamental characteristics of courts. For example, the forum must be independent. Its decision must be final and binding and capable of enforcement. The Constitution provides parties (for example, tenant and landlord) access to a judicial body to resolve their dispute.

Section 34 of the Constitution [Access to Courts] states that everyone has the right to have any dispute that can be resolved by the application of the law decided in a fair public hearing before a court, or where appropriate, another independent and impartial tribunal or forum.

Section 165 of the Constitution [Judicial Authority] states:

- ❑ The judicial authority of the Republic is vested in the courts.
- ❑ The courts are independent and are only subject to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.
- ❑ No person or organ of state may interfere with the functioning of the courts.
- ❑ Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.
- ❑ An order or decision issued by a court binds all persons to whom, and organs of state, to which it applies.

Furthermore, Section 166 of the Constitution [Judicial System] covers:

- ❑ the Constitutional Court;
- ❑ the Supreme Court of Appeal;

- ❑ the High Courts, including any High Court of Appeal that may be established by an Act of Parliament to hear appeals from High Courts;
- ❑ The Magistrates' Court; and
- ❑ Any other court established or recognised in terms of Act of Parliament, including any court of a status similar to either the High Court or the Magistrate's Courts.

The Tribunal therefore performs a judicial function that is initiated by one party, the complaint (tenant or landlord) who lodges a complaint with the Tribunal. To make a decision (ruling / judgment), members of the Tribunal must take into account the following in terms of s13 (6)(a), (b), (c), (d) and (e) of the Rental Housing Act, 50 of 1999: -

- Unfair practice regulations
- Regulations dealing with procedures
- Provisions of the lease
- The common law (if a particular matter is not addressed in the regulations or a lease)
- National housing policy and national housing programmes
- The need to find a solution in a practicable and equitable manner.
- Termination of any unfair practice.

The ruling or judgement is final, binding and capable of enforcement. Members of the Tribunal (at least three) who hear a matter do not have the powers to re-examine or review its ruling similar to a magistrate or a judge who are said to be *functus officio* and the doctrine of the *res judicata* rule applies. The doctrine means that the parties are prevented from having the same matter adjudicated.