

CHALLENGES AND CHANGES FOR TRIBUNALS

Amended Rental Housing Act

Sayed Iqbal Mohamed

ON May 13, 2008 President Mbeki signed into law the Rental Housing Amendment Act, 2007 (“the Act”).

The Act grants additional powers to the provincial Rental Housing Tribunals (RHTs) to further balance the rights, duties and obligations of tenants and landlords. The overall objective of the Act is “to amend the Rental Housing Act, 1999, so as to substitute a definition; to make further provision for rulings by Rental Housing Tribunals; to expand the provisions pertaining to leases; and to extend the period allowed for the filling of vacancies in Rental Housing Tribunals; and to provide for matters connected therewith.”

The amendments could be divided into two major categories: -

1. Legal powers

- Extending the powers of “exclusive jurisdiction,” conferred upon the RHTs by re-defining the concept of 'unfair practice'.
- Granting powers of spoliation, interdicts and attachment

2. Legal, implementation and administrative powers

- National regulations
- Enforcements of the RHTs’ rulings

Examining the amendment of section 13 (12) of the Act 50 of 1999 which now reads: -

- (12) The Tribunal may -
- (a) make a ruling as to costs as may be just and equitable;
 - (b) where a mediation agreement has been concluded pursuant to section 13(2)(c), make such an agreement a ruling of the Tribunal, and
 - (c) issue spoliation and attachment orders and grant interdicts.

The public and other stakeholders have engaged in debates over the past five years. Since the RHTs perform a judicial function to dispense a speedy resolution to tenant-landlord grievances, it was argued that it needed to have its jurisdiction extended to include the

granting of eviction orders, interdicts, spoliation and attachment orders.

Spoliation, Attachment Orders and Interdicts

Self-help remedies like dispossessing tenants of occupation through illegal lockouts and disconnection of services, for good reasons or bad faith, are reported regularly to the RHTs. The RHTs are unable to hear complaints on an urgent basis in the absence of the respondent (*ex parte* applications) and to grant interim rulings.

Landlords, who lodge complaints in respect of arrear rentals and other unpaid charges, cannot make an application to attach the personal belongings of tenants. Should a tenant register a complaint of an unfair practice with the RHT, the landlord / landlady is precluded from bringing an action in Magistrates' court until the complaint is dealt with by the RHT.

Where the tenant lodges a complaint to stall an eviction or the complaint is based on trivial or vexatious grounds, the landlord / landlady is greatly prejudiced. Attachment orders and interdicts would bring the much needed relief, considering the time frame of three months in which RHTs are required to resolve disputes.

An unlawful lockout by a landlord / landlady who has the legal right to possession of the dwelling does not translate into proper legal relief sought. The unlawful action must be corrected first before the landlord / landlady can seek legal remedy to his or her legal right to regain possession.

The amended provisions will provide a cost effective recourse to justice to a tenant despoiled and will also enable an aggrieved landlord / landlady to seek urgent relief.

The challenge is whether the procedure at the RHTs will be regulated and clear rules established for parties seeking urgent relief. Members and support staff need to be capacitated to handle what would be an increased case load that would also require expertise.

Unintended Consequences

Section 17 of the Act allows an aggrieved party to have the proceedings of a Tribunal brought under review before the High Court. The principal Act and the amendments do not provide for a party's right to challenge the merits of a ruling by appealing its decision to the High court. Since a ruling of the RHT "...is deemed to be an order of a magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and is enforced in terms of that Act¹", there may yet be an application to the high court for a declarator on this point.

Dr. Sayed Iqbal Mohamed is the chairperson of the Organisation of Civic Rights; commissioner at the KwaZulu Natal Rental Housing Tribunal and member of the Council of Canadian Administrative Tribunals. www.ocr.org.za
For advice, contact Pretty Gumede or Loshni Naidoo on 031 3046451

¹ s 13 (13)