

Clarifying eviction rights

Only official SA courts are permitted to grant ejection orders

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LAST week's article did confuse some readers that the Rental Housing Tribunal (RHT) can grant a ruling to have a tenant evicted. In view of the recent amendments to the Rental Housing Act (RHA), this is not possible and only magistrates' courts, the High courts, The Supreme Court of Appeal and the Constitutional Court can grant an ejection order.

The confusion is regretted and further clarity follows. A landlord can approach the RHT to obtain a ruling that the notice terminating a lease is not an "unfair practice" against the tenant. This may delay the landlord/ landlady from getting an ejection order because the RHTs are now prevented from even considering an application to evict a tenant.

A tenant, who receives a proper notice to vacate, may lodge a complaint with the RHT of an "unfair practice" as a "delaying tactic". There have been many instances where notices cancelling or terminating leases were indeed based on "unfair practice", and such notices have been declared not valid by the RHTs.

Section 13 (10) of the RHA states: "Nothing herein contained precludes any person from approaching a competent court for urgent relief under circumstances where he or she would have been able to do so were it not for this Act, or to institute proceedings for the normal recovery of arrear rental, or for eviction in the absence of a dispute regarding an unfair practice."

In other words, if there is no "unfair practice", or a complaint lodged with the RHT, the landlord/ landlady can approach the courts to have the tenant evicted. The RHTs are not considered courts even though it has powers to deal with "unfair practice" and its ruling is a judgment of magistrate's

court. Section 13(14) clarifies that the RHTs are not given the powers to grant an eviction: "The Tribunal does not have jurisdiction to hear applications for eviction orders."

Why RHTs cannot be given powers to grant eviction or ejection orders:

1. No Appeal Procedure

The RHA allows for a review. It does not allow for the ruling to be appealed. The RHT's eviction order or order not to grant an eviction would therefore be final.

2. RHT is not a court

Section 26 (3) of the Constitution states that no one may be evicted from their home without an order of court made after considering all the relevant circumstances. This alone renders all discussion sophistic because of the constitutionality of the RHA.

3. Arbitrary evictions

It follows that, the RHT not being a court; it would be granting arbitrary evictions because Section 26 (3) of the Constitution further states that no legislation may permit arbitrary evictions.

An ejection order is granted by the court authorising the physical removal of the tenant or occupant and his or her belongings.

An ejection order can be stayed, i.e. delayed, provided an application is made to Court. A tenant must have good reasons for the court to stay or temporarily stop the ejection. Such an application is costly.

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