

EVICTION MUST FOLLOW LEGAL PROCESS

Landlords resorting to D-I-Y means to remove unruly tenants may face damages suit

THERE is an increase in self-help remedies, especially by landlords resorting to illegal disconnection of water and electricity supply, forced evictions and illegal lockouts. The prolonged period to evict an unruly tenant and the sheer magnitude of the legal costs associated with legal proceedings, can be a compelling reason for a landlord to take the law into his own hands. This is, off course, indefensible.

There is also no excuse for an organ of the State to ignore the rule of law and to disrespect the legal process and procedures. Granted that it is frustrating to have a tenant who fails to perform on a lease contract and subsequently evades eviction notices but legal process must still follow. Last week, a neighbour informed a tenant at work that her personal property was removed from her flat by the supervisor of the building.

It would appear that the supervisor, a municipal employee, was acting on "legal instructions" to "evict" the tenant. The tenant will have to bring an urgent court application to be reinstated and may have possible claim for damages. Should the

tenant institute legal proceedings, the ratepayers will pay the municipality's legal costs for its unlawful conduct.

Earlier this year, the Constitutional Court (CC) gave a judgment in a matter that started in 2006. The City of Johannesburg (the City) wanted to evict 400 occupiers of buildings that were unsafe and presented a health risk. The City won an appeal when the Supreme Court of Appeal (SCA) granted the eviction orders but make it conditional that alternative housing be provided to those evictees who may become homeless.

The occupiers took their case to the CC¹, which overturned the decision of the SCA. In a unanimous judgment by Yacoob, J, the CC made three major findings: -

1. There must be a process of meaningful consultation between the City and the people it intends to evict. People are human beings.
2. The city must make alternate accommodation available if eviction leads to homelessness of occupiers of buildings that are unsafe and unhealthy.
3. The CC amended the provisions (section 12(6)) of the National Building Regulations and Building Standards Act 103 of 1977.

Where criminal sanction could follow for non-compliance to vacate an unsafe

¹ Occupiers of 51 Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others (24/07) [2008] ZACC 1; 2008 (3) SA 208 (CC) (19 February 2008)

building immediately or within a period specified in a notice issued by a municipality, such action must now follow after the municipality has obtained an eviction order.

What is the impact of CC's case for other related matters between a municipality and its tenants or tenants in privately owned buildings like the Occupiers of 51 Olivia Road Berea? Can a municipality grant an owner permission to demolish a dwelling without enquiring about occupation by tenants? Can permission be given to convert a dwelling for non-residential use while tenants occupy it?

Municipalities presently grant such permissions at great distress to tenants, even rendering some families homeless. When an owner instructs for the supply of water and electricity to be disconnected on grounds that the dwelling is unoccupied, a municipality does not verify or investigate that if this is indeed the case.

Often, tenants suffer at the revolting approach of some unscrupulous landlords and are unable to have basic services restored or find suitable affordable alternate accommodation. It is necessary for a municipality to revise its application form to demolish or to have services disconnected, making provision for an enquiry as to the dwelling being vacant or occupied.

Notwithstanding the hazardous condition of the building, in granting permission to demolish, the municipality is responsible for displacing a family / occupants when its constitutional duty is to provide accommodation. It is the responsibility of the officials to investigate an application, the circumstances that necessitated such an application and the position of both the owner and the occupants.

Consent

It is also the duty of officials to engage with other departments, to ascertain the negative consequences, if any, in taking a decision to grant an applicant permission to demolish or to have services disconnected or give consent to convert a dwelling for non-residential purpose.

Yacoob J states²: "Municipal officials do not act appropriately if they take insulated decisions in respect of different duties that they are obliged to perform. In this case the City had a duty to ensure safe and healthy buildings on the one hand and to take reasonable measures within its available resources to make the right of access to adequate housing more accessible as time progresses on the other. It cannot be that the City is entitled to make decisions on each of these two aspects separately, one department making a decision on whether someone should be evicted and some other department in the bureaucratic maze determining whether housing should be provided. The housing provision and the health and safety provision must be read together."

The CC judgment of the Occupiers of 51 Olivia Road, Berea has serious implications for organs of State and municipalities must adhere to the constitutional requirements of the country. Locking out a tenant and removing her personal belongings is unconstitutional and dehumanising. A city must lead by example if it wants its citizens to obey the law.

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² In the above case (Occupiers of 51 Olivia Road, Berea)

