

# Giving the RHTs legal ‘teeth’

## Enforcement stiffest challenge

Daily News Tuesday February 12 2008

The Rental Housing Tribunals RHTs are said to have no “teeth”, since it cannot enforce its rulings; cannot (after serving a subpoena) compel a witness to attend or to have a party produce documents.

Six years after the establishment of at least three Rental Housing Tribunals [RHTs], enforcing its rulings still poses the greatest challenge.

If a party is affected by non-compliance of the RHT’s ruling, there is no “Notice to Renew Proceedings” to have the matter heard. The members of the RHT are said to be *functus officio* and the doctrine of the *res judicata* rule applies. The doctrine means that the members and the RHT are prevented from having the same matter adjudicated.

If a party ignores a summons to appear before the RHT, there is no recourse to hold the party in “contempt of court” and to compel the party to attend a hearing or to comply with any of its order or ruling.

The additional powers to be given to the RHTs later this year, such as **attachments, interdicts and spoliation** will result in matters being heard *ex parte* in certain instances and an interim ruling will be served on the absent party for compliance. The need for enforcement is therefore critical.

The recent amendments, particularly regarding section 13 of the Rental Housing Act 50 of 1999 [“the RHA] needs to be

examined to find a practical solution. Amendment of section 13 of the RHA: -

1. makes a ruling of the RHT an order of a magistrate’s court in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) – [“the MCA”]
2. and, is enforced in terms of that Act.

### What is an order of a magistrate’s court?

A judgment of a magistrate’s court in civil cases “includes a decree, a rule and an order”.

### Who enforces judgment of magistrates’ courts?

A sheriff enforces a decree, a rule and an order of a magistrate’s court

### Who enforces orders of the Small Claims Court (SCC)?

The sheriff executes orders issued by the SCC after the case is transferred to the magistrate’s court for the execution procedure to be followed to enforce the judgment or order of the SCC.

### What are the powers of Sheriffs and how are they appointed?

In terms of the Magistrates’ Courts Act, a sheriff is empowered to carry out certain functions emanating from sections 14-17 and R 8 of the MCA. Rule 8 reads: **Sheriff of the Court**

Except as otherwise provided in these rules, the process of the court shall be served or executed, as the case may be, through the sheriff.

### **Appointment of Sheriffs**

Sheriffs are appointed in terms of section 2 of the Sheriff's Act 90 of 1986. The Minister of Justice appoints a sheriff for lower or superior court as sheriff of that court. The sheriff is independent and does not work for the courts but serves documents or executes orders issued by a lower or superior court.

### **There are at least two possible scenarios for the enforcement of the RHT orders**

1. Enforcement through sheriff
2. Conversion into magistrate's court order

### **Enforcement through sheriff**

The sheriff is appointed by the Minister of justice for a lower or superior court as sheriff of that court. The Sheriff's Act needs to be amended so that Minister may appoint the sheriff for the Rental Housing Tribunal of a province and to make other relevant amendments. The RHA needs to include a section dealing with Sheriffs.

### **Conversion into magistrate's court order**

Since a ruling of the RHT is deemed to be a an order of a magistrate's court and the amendment of the RHA would make a ruling enforceable in terms of the Magistrates' Courts Act, a ruling could be transferred to the Magistrates' Courts to be converted into a

magistrate's court order. The clerk of the magistrate's court would then number the RHT's ruling with a consecutive number for the year during which it is filed. The process for the execution of any ruling of the Rental Housing Tribunal for the surrender of property whether movable or immovable, shall be by warrant issued and signed by the clerk of the court and addressed to the sheriff.

### **Conclusion**

The Ministers and department heads of Housing and Justice have to acknowledge the serious collapse of the RHTs' orders. There must be an undertaking to effect the necessary changes in the relevant legislations, including the Procedural Regulations of the RHA within a short period. Failure to do so will further humiliate members of the RHTs and support staff and the public will have no confidence at all in the RHTs. Parties seeking relief from the RHT will be prejudiced by the delay due to implementation problems regarding rulings and compliance of other orders, resulting in financial loss and frustrations.

Dr. Sayed Iqbal Mohamed, Chairperson, Organisation of Civic Rights; Member of the KwaZulu Natal Rental Housing Tribunal and Council of Canadian Administrative Tribunals. [www.ocr.org.za](http://www.ocr.org.za) For advice, contact Pretty Gumede or Loshni Naidoo on 031 3046451