

Integrity of Tribunal vital

Part 2: Rental Housing Act Procedural Regulations

PROCEDURAL Regulations, 2008 to the Rental Housing Act, 1999, (Act No 50 of 1999) were recently published for public comments. The national minister of housing in consultation with the select and portfolio committee and housing minister in each province, must introduce regulations that would (for the first time) apply to all provincial Tribunals. This article summarises sections 5 to 11 and concludes the draft Procedural Regulations.

Section 5 deals with the “requirements if no dispute exists”. The Tribunal must notify the complainant in writing that the dispute lodged is not related to an unfair practice.

Section 6. Procedure on determination that dispute exists. When the complaint constitutes an unfair practice, the Tribunal must resolve it through mediation or a hearing. Parties are informed in writing of the particulars of mediation, the respondent’s right to examine the file and, if necessary, to provide the Tribunal with a written response thereto and / or lodge a counter claim within 21 days of receipt of the Tribunal notification.

Section 7. Mediation: Process and Procedure

At least 10 days before the mediation, parties are informed (Notice of Mediation) of the nature of the dispute, particulars of the parties; relevant information of mediation and the mediation date. This section also covers the delivery of notices to individuals, body corporate, voluntary association and juristic person (company, close corporation), qualified interpreter, and the process to be followed for a successful outcome or failed mediation.

The mediation process is set out that includes the impartial role of the mediator, confidentiality nature of mediation and that parties do not take an oath or make affirmation. Mediation must be completed within thirty (30) days from the commencement date but may be extended with the consent of the parties and the Tribunal. A Tribunal member who acted as a mediator, being privy to mediation, is not permitted to be part of the Tribunal hearing.

Section 8. Hearing: Process and Procedure

The Tribunal summons parties to a hearing and hold all hearings in public, unless a party successfully applies for a hearing to be held in camera. The hearings panel consists of a minimum of three but not more than five members. Evidence is given under oath and parties are informed of their rights, the procedure to be followed by the Tribunal, the effect

of its rulings and the consequences of contravention. The Tribunal will follow evidentiary rules and respect the principles of natural justice. Under general responsibilities of members, members are expected to conduct themselves all times in a manner that promotes public confidence in the integrity and impartiality of the Tribunal; be patient, dignified and courteous to the parties, representatives, witnesses and others before the Tribunal and shall require similar conduct of others. Members shall not initiate, permit or consider *ex parte* communications.

Section 9. Spoliation and Interdicts Procedure

A tenant or landlord may lodge a complaint on an urgent basis for spoliation or interdict in terms of s13 (12) of the Act. The respondent will be served immediately with the Tribunal’s interim ruling, together with a copy of the complainant’s statement.

Section 10. Duties and functions of Tribunal Staff

It explains the staff’s duties and responsibilities, including: conducting preliminary investigations, inspections of buildings; obtaining relevant documents and record all the information received. Give evidence before the Tribunal and submit applications to a Magistrate’s Court to prosecute when instructed by the Tribunal. Do anything in the reasonable execution of functions and duties required by the Act or Tribunal. Staff, under general responsibilities, shall observe the standards of impartiality, integrity and shall diligently discharge administrative responsibilities without bias or prejudice, and maintain professional competence and diligence in carrying out the administrative business of the Tribunal.

Section 11. General provisions

Includes the responsibility of the Tribunal and its staff for the recording of hearings, custody and storage in chronological or numerical order of all information of mediation, other proceedings, hearings and transcripts. A legal representative or agent shall not be cited as a landlord or tenant unless such are parties to a contract. Any person, or group which has an interest in public safety, health and security may lodge a complaint with the Tribunal specifying its interest. Members may be referred to as Commissioners.

Section 11. Short title and Commencement: These regulations are called the Rental Housing Procedural Regulations, 2008.

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. For advice, contact Pretty Gumede or Loshni Naidoo on 031 3046451

