

Mediators must follow procedure

WHEN parties attend a mediation in terms of the Rental Housing Act, do they have to be sworn in by the mediator? What happens if a party to a dispute is not satisfied with the mediation process at the Rental Housing Tribunal? Can a landlord or tenant refuse mediation or object to signing a mediation agreement?

Mediation is a form of alternative dispute resolution that allows the complainant and the respondent to look for a compromise to a problem or dispute arising from the tenancy agreement.

A third party appointed by the tribunal is required to mediate to bring about a settlement, Section 13 (2) (c) of the Rental Housing Act, 50 of 1999 states that

- Where the Tribunal is of the view that there is a dispute... and then such dispute may be resolved...appoint a mediator- who may be a member of the tribunal, a member of staff or any person deemed fit and proper by the tribunal- with a view to resolving the dispute;
- Where the Tribunal is of the view that the dispute is of such a nature that it cannot be resolved through mediation... conduct a hearing and, make such a ruling that is just and fair in the circumstances.

The following is crucial in determining if a correct procedure is being followed in mediation: -

- Parties are informed of mediation in terms of the Rental Housing Act, 50 of 1999;

- The mediator informs the parties of the procedure to be followed;
- Parties must sign a confidentiality agreement because the discussion is private;
- The mediator must be impartial; must explain the mediation process, help and guide parties to arrive at a mutually acceptable solution;
- The mediation process is a voluntary one even though parties were issued a notice by the tribunal to attend it;
- Mediation is about the common interest of the parties involved and not the interest of the mediator;
- A mediator cannot coerce a party in any way;
- A mediator must conduct herself / himself professionally;
- Parties have the right to be represented;
- The solution must be reached through a voluntary settlement with the help of the mediator;
- A failed mediation is referred to the Tribunal for a hearing and parties are informed accordingly;
- A settlement agreement is signed when the mediation is successful or if there is an agreement on one or more parts of the dispute. The unresolved aspect(s) of the dispute is referred to the tribunal for adjudication.
- Parties do not take an oath or make affirmation because they do not give evidence.
- The mediator becomes privy to the discussions through mediation, It is, therefore, preferable for the mediator, who is a member of the Tribunal, not to be part of the panel that would hear the evidence of the parties.
- Parties have the right to ask for an adjournment to consider proposals.
- The complainant has the right to withdraw the complaint during mediation.

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