

Protection against illegal steps Order facilitates a just solution

SPOLIATION is a form of interdict formerly used in Roman law that protected the person's possession by stopping interference or disturbance.

The right to ownership or the right to possess was not decided through the interdict. This aspect of the common law is still used in South Africa¹. It is a speedy remedy to grant relief to a party who has been dispossessed illegally or when services are disconnected illegally.

Illegal action to deprive possession or the continued supply of services is a quick-fix or self-help remedy, which is not allowed in our law.

Farlam JA² summarises this position as follows: -

¹ Refer to section 30 of the Magistrates Court Act 32 of 1944 as amended under IV. Mandamenten Van Spolie and the Magistrates Court's rules 55 and 56 for the definition and procedure.

² *Impala Water Users Association v Lourens NO and others* [2004] 2 All SA 476 (SCA).

“The considerations set out in the judgment as to self-help are in any event buttressed by the provisions of section 34 of the Constitution, which reads:

“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial forum.”

Innes CJ³ summarises the Roman law and Roman-Dutch position that still applies in South Africa regarding the unlawful self-help remedy at page 122 of his judgment: -

“It is a fundamental principle that no man is allowed to take the law into his own hands, no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable. If he does so, the Court will summarily restore the status quo ante, and will do that as a preliminary to any inquiry or investigation into the merits of the dispute.”

Spoliation is one of the most effective ways to regain possession of the leased

³ *Nino Bonino v De Lange* 1906 TS 120.

dwelling or to have services such as water and electricity supply, restored that were unlawfully disconnected.

A tenant files an application with a court or the RHT by way of an affidavit explaining the circumstances of the illegal action and name and address of the person(s) who carried out the illegal action.

Like the ancient Roman law, our courts do not consider the reason for the illegal action even if rental or levy is owed or other debt due to the owner or body corporate.

A separate legal remedy is available and the courts will not allow individuals or entities to take the law into their own hands. Two wrong actions do not render a just solution.

The action of the municipality as the landlord, disconnecting services when rental is owed through its consolidated billing system need to change.

In the case of a single poor parent with young children, the municipality's policy of consolidating the rental and basic services accounts of a tenant is unjust and immoral when legal remedy is available for breach. A tenant in such a situation does not have recourse to spoliation as a means to have services restored.

Where can one obtain a spoliation order?

A person can approach the High court, Magistrate's court or the provincial Rental Housing Tribunal (RHT). The RHT can now issue such an order in terms of section 13(12)(c) "issue

spoliation and attachment orders and grant interdicts," for residential tenants.

Whether the RHT has all the rules is another matter because rules set out what is required and details of the procedures to be followed.

In the absence of Procedural and Unfair Practices Regulations that is required in terms of the Rental Housing Amendment Act 43 of 2007, it is not known on what legal basis the RHTs are hearing matters.

Can a body corporate or trustees disconnect electricity or water supply or lock a tenant out?

No! Unless the electricity was disconnected by the municipality, it would be illegal. You can get an urgent order to have it reconnected.

Even if the house rules state the body corporate can do this, it is **illegal**. The conduct and management rules which are annexures to the regulations to the Sectional titles Act are powerful sets of documents (unlike the house rules) but even in this instance, an unlawful authority inserted as a rule will not make it legally enforceable.

A legal challenge will lead to costs that will have to be paid by the owners, which is usually done by adding this to the levy.

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