

RHT plays neutral arbiter

All parties to lease agreement subject to same treatment in law

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A TENANT signs a lease agreement with the department of Public Works (DPW). An official authorised to attend to tenancies concludes the agreement on behalf of the DPW. The lease is linked to the tenant's employment and a clause states that in the event employment is terminated, the tenancy also comes to an end on the last day of service.

Another clause stipulates that the tenant shall not sub-let the dwelling, or any portion thereof, nor shall the tenant allow any other person to occupy by the dwelling, without obtaining the written consent of the landlord.

The tenant (principal tenant whom we will refer to as "PT") later sub-lets the dwelling without obtaining permission from her landlord.

The DPW is the "PT's" landlord and the "PT" is the "ST's" landlord. The "ST" can lodge a complaint against his / her landlord for example, the landlord's failure to maintain the dwelling.

He or she cannot lodge a complaint against the DPW.

The "PT" can lodge a complaint against her landlord, the DPW and the landlord by being a government entity cannot refuse to respond to any legal processes.

Take the case of the tenant having lodged a complaint of "unfair practice" against the DPW with the provincial Rental Housing Tribunal (RHT).

The RHT has jurisdiction over all tenant-landlord matters and any person or entity can lodge a complaint (complainant) or has to be present at a hearing as the respondent when summonsed to appear before the RHT.

All tiers of government which is a party to a lease contract of a residential dwelling are subjected to the same treatment as any other private citizen when a matter comes before the RHT. Any government administration like the DPW, the department of housing in the province or of a municipality may also lodge a complaint with the RHT against its tenant. The person to be summonsed is the Minister in charge or the city manager but may be represented by an official who is delegated or assigned the duty to act on behalf of the Minister or city manager.

The landlord may be the department of housing, in which instance the Minister who is the member of the executive for housing in the provincial legislature (MEC) is served with summons.

It is for this reason that a RHT, which performs a judicial function, is established by the (MEC)-not by the department of housing and not through the Housing Act which may appoint an administrative body. This places the RHT in a neutral and independent position. It is also for this reasons, the MEC responsible for the appointment of members to the RHT is not given authority to delegate powers. According to Devenish,

Govender & Hulme (2001:73) "...delegation must therefore be authorised either expressly or impliedly by an empowering Act".

The Rental Housing Act which is the empowering legislation does not confer such powers on the MEC and does not vest him /her to delegate any power to his / her subordinates. However, section 11 (4) of the Rental Housing Act 50 of 1999 authorises the RHT to delegate certain powers, with overriding powers over the delegation made.

For this reason that the director general (DG) or head of department (HOD) is not appointed to head the RHT. This section states "the Tribunal may, subject to such conditions as it may determine, delegate any powers conferred on it other than a power under section (13)(2)(d), (3), (4) and (5) to a member of the Tribunal or a person appointed in terms of subsection (1) but any such delegation will not preclude the Tribunal from exercising any such delegated powers itself, and the Tribunal may set aside or amend any decision of the delegate made in the exercise of such powers."

When compared to say the Housing Act, certain powers are delegated to the MEC for housing. Section 7 of the national Housing Amendment Act 4 of 2001 deals with the functions of provincial governments.

Subsection 5 reads; "the MEC may, subject to any conditions he or she may deem appropriate in any instance-

(a) delegate any power conferred on him or her by this Act; or

(b) assign any duty imposed upon him or her by this Act, to an officer or employee of the department responsible for the administration of housing matters in a province, either in his or her personal capacity or by virtue of the rank he or she holds or the post he or she occupies: Provided that the delegation or assignment does not prevent the person who made the delegation or assignment from exercising that power or performing that duty himself or herself. There is no provision to have delegated powers conferred on the MEC in the national Rental Housing Act or duties and functions assigned to an official".

A Minister or official must tread cautiously when acting or prevented from carrying out certain functions. We have a long established set of rules and laws that deals with the authorisation of delegation of powers, mandates, deconcentration and assignment of duties.

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