

Tenant wins legal rent hike relief

Challenge succeeds

Daily News Tuesday September 11 2007

THE general impression created by some landlords of tenants who reject rental increases is one of unruly and unlawful "behaviour". Why should tenants refuse to pay an increase unless they want to continue occupation at a lower rental when service charges and market rentals are way above the rentals charged? There are tenants who will look for any excuse not to pay an increase.

Many show good cause for not agreeing to an increase, these include maintenance, security and poor management. When James Choonoo of City Heights, a model tenant, rejected the landlord's offer of an increase, he had done so on strong legal grounds. His landlord Saanthamurthi (Santha) Naidu was not willing to discuss with Choonoo or the OCR Choonoo's reasons for rejecting the increase.

Choonoo was also responsible for organising 74 tenants; this incensed his landlord and frustrated Allan Stanley Jordan of Sky Administration which managed City Heights. Durban Magistrate Graeme Field's judgment last week was decisive. It was a victory for tenants like Choonoo.

The crux of the case was the offer of a new increase and the rejection by the tenant. One party cannot unilaterally change the conditions of a lease agreement and then hope to enforce it. The tenant succeeded on legal grounds with the 27 page judgment being useful and informative for tenants who perform their part of the agreement and

follow legal principles. Choonoo's testimony also indicate the unfavourable conditions under which he lives and the many attempts he made to have the landlord sort out the state of the building.

Choonoo did not have full use and enjoyment of the dwelling while he has not failed in his responsibility as a tenant of fifteen years. He paid his increases in the past with empty promises of repairs and maintenance to be undertaken.

The lifts work intermittently or not at all for weeks and his decision not to pay the latest increase was to challenge his landlord to deliver service for the rentals received. The magistrate referred to Choonoo as a gentleman, calm, polite, unshaken by the landlord's attorneys vigorous cross examination, being a credible witness and one who stuck to his guns.

He was not impressed by Saanthamurthi Naidu's witnesses: Allan Stanley Jordan and Ranjith Mohanlall. The landlord's witnesses, Field stated, were argumentative at times and did not have clear recollection of important details regarding the rejection of the increase (Jordan); evasive and giving nonsensical answers (Mohanlall).

"I got the impression from both witnesses that they had an urge for self justification which coloured their evidence and that the evidence as former agents of the plaintiff was distorted by partisanship".

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