

Tribunal now shield the vulnerable

Abolition of rent control left the RHA-created bodies to mediate in related disputes

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IS a person of a residential lease still “protected” under the Rent Control legislation?

In other words, are rent increases still limited to a 10% increase per annum and evictions restricted?

No, this no longer applies.

A large number of dwellings were phased out of rent control, between 1978 and 1980, because of powerful campaigns by landlord’s representatives who had considerable support in the apartheid parliament.

Consequently, rent control applied to dwellings built and first occupied on or before October 20, 1949. Any tenant who occupied this category of dwelling, regardless of income, was “protected” by the provisions of the Rent Control law. As for dwellings that were phased out of rent control, a tenant also enjoyed the “protection” of the rent control legislation if she or he was in occupation at the time the dwelling was decontrolled (brought out of rent control) and his or her income was within a specific income category (amended regularly in the *Government Gazette*).

A “protected” tenant enjoyed the same “benefits” under the Rent Control Act as a tenant living in a rent-control building. The income of a “protected” tenant, however, was not taken into account in determining

the rent increase of rent-controlled dwellings.

In reality, a pensioner's rental was the same as that of a millionaire occupying a similar dwelling in the same building. The Rental Housing Act, 50 of 1999, provided a “cooling off” period of three years for tenants who were living in rent-controlled dwellings.

On July 31, 2003, rent control ceased to exist and landlords were allowed to increase rentals without restriction and were no longer required to apply to a statutory body (the defunct Rent Boards) for an increase.

This has been a great relief to landlords, but has also created crises in the lives of pensioners and poor tenants.

Rent control laws were introduced after World War 1 in most countries and were amended, abolished, and reintroduced over the past 90 years because of the critical housing shortage.

It still exists in the United States, alongside landlord-tenants’ courts that have the jurisdiction of high courts and with a subsidy scheme for poor tenants.

In SA, the introduction of the Rental Housing Act 50 of 1999 (RHA) led to the abolition of rent control in July 2003. More tenants in the Western Cape than in other provinces registered their

dissatisfaction and anxiety at the massive rent hikes that followed.

The provincial Rental Housing Tribunals, as a primary source of the impact of the abolition of rent control¹, needed to furnish relevant information to the Minister of national housing for her to evaluate the need for intervention to alleviate hardship.

A study of the annual reports of Tribunals, especially the KZN Rental Housing Tribunal, reveals a stats driven approach.

It deals with the numbers game that promotes the staff management's "achievements" rather than the quality of delivery or the hardships experienced by tenants and landlords/ladies.

The KZN Rental Housing Tribunal is considered to have granted enormous increases in one leap, highest increases in the country and perhaps in the history of rent increases.

This has left pensioners, single parents and poor tenants in a tight spot. Families are being displaced due to exorbitant increases, which go against the spirit of the RHA and against leading cases of the courts, including the constitutional court.

It is one of the reasons that there are at least two mandatory or statutory requirements in the RHA: (i) the Tribunals must be properly constituted and (ii) with the approval of the provincial housing portfolio committee. Members appointed to the Tribunals must have knowledge and expertise and selected from certain fields such as property management, housing development matters,

consumers matters pertaining to rental housing or housing development matters (section 9 of the RHA).

Law is not a requirement, although the RHA should be amended to have at least one person with legal expertise. The Gauteng and Western Cape Tribunals seem to be properly constituted and wise in their approach to rent increases.

Political factors seem to have prevented the establishment of the Eastern Cape and Free State Tribunals. Tenants and landlords / landladies are yet to see the benefits of the RHA seven years later. Amendment to the RHA should empower the Minister of national housing to set up tribunals.

The response of the provincial rental housing tribunals to complaints of exorbitant rent increases of formerly rent-controlled dwellings, the "struggle" by aggrieved tenants and the responses by stakeholders, will direct the future of tenant-landlord relationships in this regard.

For now, Tribunals are required to adjudicate a rental that is just and equitable to both parties, but market-related, an arduous and challenging task to balance the interests of competing parties within a burgeoning rental market, undersupply of rental dwellings and growing unemployment and homelessness.

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¹ Jackpersad No and others v Mitha and Others 2008 (4) SA 522 (D).