

# DEADLINES DUE IN LANDMARK CASE

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## Judgment finds state constitutionally responsible for housing of homeless tenants

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EVICTION orders become necessary to force non-paying tenants out of the dwellings they occupy.

Tenants fail to meet rental commitments for various reasons, such as unexpectedly becoming unemployed; separation or divorce; death of the main income earners; irregular income; sudden, exorbitant rental increases or proper cancellation of the lease agreements.

Some tenants also exploit landlords by refusing to pay and know that the slow legal process means they can continue with occupation for long periods without paying rent.

These factors did not apply to the desperately poor tenants who occupied a disused commercial property consisting of garages, offices and a factory in the central business district of Joburg since 1999.

The South African socio-political dynamics, in the context of one of the most respected constitutions in the world, has seen groundbreaking pro-poor judgments. The judgment in the Blue Moonlight Properties 39 (Pty) Ltd versus the Occupiers of

Saratoga Avenue on February 4 is one such case.

The Constitution of 1996 protects property owners as well as the right to housing.

A private owner can evict even a poor family because the right to housing is the state's responsibility. Evicting the poor means additional hardships, including the reality of becoming homeless. Constitutionally, the private owner is not responsible for the tenant's housing needs, nor for preventing homelessness or suffering from the consequences of eviction.

The state has to take care of its citizens' basic needs and in this recent judgment, even if the evictees do not occupy government housing, the state is still responsible.

In the late 1990s many commercial/ industrial properties became vacant in the inner cities in South Africa as businesses moved to the suburbs. In Durban, clever "entrepreneurs" leased 28 buildings by 2002 and between themselves provided "accommodation" and "working environment" to about 10 000 self-employed individuals, mainly women.

Tenants occupied small cubicles at extremely high rentals, and were subjected to appalling living conditions, with

communal facilities offering one tap and a toilet to about 80 people per floor.

Johannesburg witnessed similar trends, but, generally tenants “invaded” vacant residential and commercial buildings, often paying rentals either to persons claiming to be the owners or landlords, or to representatives in charge of collecting rentals in return for the horrendous living spaces.

In some instances, owners exposed for their exploitative conditions claimed not to know about the occupants and put the blame on representatives. In the case of the occupiers of Saratoga Avenue, the owner served notices to vacate as he intended to demolish and redevelop the site.

The owner also received a warning notice from the City of Johannesburg, in terms of its emergency services by-laws, of the dangerous state of the building. In 2006 Blue Moonlight Properties 39 (Pty) Ltd, as the owner of the Saratoga property, approached the South Gauteng High Court to evict the occupiers- the first respondent in the case, known as the Occupiers of Saratoga Avenue.

Wits University’s Centre for Applied Legal Studies defended the tenants.

The tenants had already twice approached the Gauteng Rental Housing Tribunal regarding their tenancy-related problems. In the Blue Moonlight case, the tenants brought an application against the City of Johannesburg Metropolitan Municipality, joining it in the proceedings and requiring the municipality to provide alternate accommodation.

In other inter-related legal developments, the owner was supported by the tenants in a contempt application against the municipality for not having complied with

Judge Masipa’s order. The judge lambasted the municipality for distancing itself from the plight of the poor occupiers for maintaining that they were not its responsibility.

The matter was finally concluded when Judge Spilg delivered his judgment on February 4, followed a week later by his detailed reasons.

In short, the judgment holds the state directly responsible for taking care of the housing needs of people evicted from privately owned properties. The judge ruled as follows:

- The occupiers must move out by March 31, or the sheriff is authorised to evict them;
- The City of Johannesburg Municipality’s housing policy is unconstitutional as it discriminates against evictees from private property;
- It shall also pay rentals for the occupiers for the period July 1, 2009, to March 31, 2010;
- It shall present a report under oath to the court by March 12, which, among other requirements, will remedy defects that presently preclude tenants / occupiers of privately owned property from being provided suitable, alternate accommodation;
- The municipality must, by March 31, provide at least temporary accommodation near the present property, with rental to be decided by the court if no agreement is reached prior to March 31; and
- Alternatively, until suitable alternate accommodation is found, the municipality will have to pay each household’s monthly rental of R850 by the 25<sup>th</sup> of each month, as well as a deposit, should that be required.