

HOW THE TRIBUNAL DELEGATES POWERS

MEC must appoint RHT members to ensure that it remains neutral and independent

The Rental Housing Tribunal (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 Department of Public Works, 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 and 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 reason, 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 (RHA), which is the empowering legislation, does not confer such powers on the MEC, and does not vest him or her to delegate any power to his / her subordinates. Section 11 (4) of RHA authorises the RHT to delegate certain powers, with overriding powers over the delegation made. It is 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 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 RHA or duties and functions assigned to an official. A Minister or an 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.

Comparative differences between Rental Housing Act (RHA), National Housing Act (NHA) and provincial Housing Act (PHA)

RHA - National	RHA – Provincial – MEC responsibility	PHA
Applies to all provinces	No changes can be made by Minister of Housing (MEC of a provincial legislature) to the RHA	Provincial - Changes can be made by MEC of a provincial legislature subject to national HA
	Statutory duty on the MEC to establish RHT & to make support staff available to the RHT	MEC can delegate certain powers in terms of the NHA (s 7)
	HoD is the accounting officer – No duties can be assigned to him / her or powers delegated.	HoD and other officials - powers can be delegated; duties assigned

Provincial governments do not have powers to amend or modify the RHA. In the Northern Cape Province Budget Statement 2004/2005¹ reference is made to the Rental Housing Act drafted and approved and the implementation of the Provincial Rental Housing Act. This is not possible.

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¹ Northern Cape Province Budget Statement 2004/2005, Department of Housing and Local Government (at 250)