

LIMITS OF TRIBUNAL'S AUTHORITY A handle on 'occupational rent'

CAN a person lodge a complaint with the provincial Rental Housing Tribunal (RHT) in respect of occupational "interest" or occupational "rent"?

No!

This does not apply to a tenant-landlord lease contract, but to a purchase and sales agreement.

The Rental Housing (RHA) and the RHT does not have authority or jurisdiction over matters that affect the sale of a dwelling.

The RHA is a law of general application¹[1] passed by Parliament for landlords and tenants of residential dwellings.

As a law of general application it is aimed to protect and regulate tenant-landlord

relationship in all situations of leased dwellings.²

What is occupational "interest" or occupational "rent"?

This refers to an amount the buyer pays for such occupation, normally during the period of negotiating a sale or awaiting transfer of ownership.

It could be for use and enjoyment with a fixed amount, or it could be an amount fixed as a percentage of the purchase price.

The use of the word "rent" does not equate to a rental of a lease agreement in as much as the concept of "use and enjoyment" of a hired suit or set of clothes for which rental is paid does not result in a lease contract between the hirer and the shop that rented out the suit.

Nienaber JA defines occupational interest succinctly:

¹[1] Section 36 Limitations (Bill of Rights in the Constitution of the Republic of South Africa, 108 of 1996).

²[2] *Kendall Property Investments v Rutgers* 2005 (4) 81 (C).

“Occupational interest is the return which the seller of immovable property earns by permitting his purchaser, pending payment, to occupy the property sold”³

What is an option to purchase or right of first refusal in a lease agreement?

Can a tenant lodge a complaint of an unfair practice regarding a dispute that the landlord / landlady has refused or failed to offer the dwelling for sale to the tenant as stipulated in the lease contract?

No!

A clause reads: “The tenant has the first option to purchase the dwelling during the lease period when the owner decides to sell”; or “The tenant has the first right of refusal on the dwelling for the purchase price R120, 000.00 for a period of 12 calendar months from the start of this lease.”

Or else the tenant’s employment is linked to a lease which in turns allows him the option to purchase, provided he

³[3] *Thompson v Scholtz* 1999 (1) SA 232 (SCA) at 238.

fulfil the terms of his employment and the lease⁴.

This aspect of the lease applies to a purchase and sale of the dwelling and the dispute with the landlord-owner does not relate to the use and enjoyment, rental and other terms and conditions of the lease contract. The RHT does not have authority to resolve such a dispute.

The lease can include a clause that states that the tenant would work for the landlord for a monthly salary.

The failure to pay salary does not affect the lease agreement, nor can the tenant set off against the rental the salary owed to him or her.

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⁴[4] *Mittermeier v Skema Engineering (Pty) Ltd* 1984 (1) SA 121 (A).