

Mediation agreement confidential

Voluntary process aimed at finding a compromise solution

WHAT happens at the Rental Housing Tribunal (RHT) on the day of the mediation or hearing?

If it is a **Mediation**: -

- ❑ The mediator informs the parties of the procedure to be followed.
- ❑ Parties must sign a confidentiality agreement because the discussion is private.
- ❑ The mediator does not disclose whatever is discussed to the tribunal. This is important because if the mediation fails, the dispute is referred to the Tribunal for a hearing.
- ❑ The mediator must be impartial; must explain the mediation process, help and guide parties to arrive at a mutually acceptable solution.
- ❑ The mediation process is a voluntary one, even though parties were issued a notice by the tribunal to attend.
- ❑ The mediator explains his or her role, that would include the following: -
 - ❑ That the mediator does not have powers to make a ruling
 - ❑ Does not take sides but is there to help parties to find a solution
 - ❑ Advises parties about the law relating to the dispute
 - ❑ A Mediation Agreement is signed by the parties and the mediator when a dispute is settled
 - ❑ Parties are given copies of the Mediation Agreement.
- ❑ Mediation is about the common interests of the parties involved and not the interest of the mediator.
- ❑ A mediator cannot coerce a party in any way.
- ❑ A mediator must conduct herself / himself professionally.
- ❑ Parties have the right to be represented.
- ❑ The solution must be reached through a voluntary settlement with the help of the mediator.
- ❑ A failed mediation is referred to the Tribunal for a hearing and parties are informed accordingly.
- ❑ A settlement agreement is signed when the mediation is successful or if there is an agreement on one or more parts of the dispute. The unresolved aspect(s) of the

dispute is referred to the tribunal for adjudication.

- ❑ Parties do not take an oath or make an affirmation because they do not give evidence.
- ❑ The mediator becomes privy to the discussions through mediation. The mediator, who is a member of the Tribunal, cannot be part of the panel that would hear the evidence of the parties.
- ❑ Parties have the right to ask for an adjournment to consider proposals.
- ❑ The complainant has the right to withdraw the complaint during mediation.
- ❑ At the conclusion of a successful mediation, parties could ask for the agreement to be made a ruling of the Tribunal.

The Jackpersad case and RHT mediation

A signed mediation agreement can become a source document of magnitude with serious consequences for a party electing to reject it. In the Jackpersad case¹ the court held that the settlement agreement concluded at the RHT was valid and binding.

The defendants (tenants) sought to have the mediation agreement declared unenforceable on the

grounds that they were ignorant of their rights in terms of the Rent Control Act that provided certain “protection”.

Pegging

The few rights that emanated from this Act were not carried over after the three year period that ended on July 31, 2003.

One of the “protection” was the pegging of the rent increase to 10% per annum between August 1, 2001 to July 31, 2003.

The mediation settlement included a 15% rent increase concluded between the parties with the mediator on October 28, 2003.

Swain J said: “I therefore conclude that the settlement agreement was valid and enforceable and not vitiated by any alleged ignorance on the part of the respondents of their “rights” in terms of the Rent Control Act.”

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