

OPERATING ON SHAKY GROUND

RHA embeds regulations in law, yet they don't exist in practice

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A respondent who received "summons" from the Rental Housing Tribunal (RHT) needed advice regarding the possibility of being imprisoned should he fail to appear before the RHT. The following appeared on the "summons":

"Kindly take note of section 16 (b) of the Rental Housing Act which provides as follows:-

"Any person who has been duly summoned under Section 13 and who fails, without sufficient cause:-

- to attend at the time and place specified in the summons; or
- to remain in attendance until excused by the Tribunal from further attendance;
- will be guilty of an offence and liable on conviction, to a fine or imprisonment not exceeding two years or both such fine and imprisonment."

The relevant provision of the Rental Housing Act 50 of 1999 as amended (the RHA) reads:

Offences and penalties

16. (1) Any person who -
- (a) fails to comply with sections 4 or 5(2) or (9);
 - (b) has been duly summonsed under section 13 and who fails, without sufficient cause –
 - (i) to attend at the time and place specified in the summons; or
 - (ii) to remain in attendance until excused by the Tribunal from further attendance;
 - (c) has been called upon, in terms of section 13(3)(f) and who refuses to be sworn or to make an affirmation as a witness;
 - (d) fails, without sufficient cause –
 - (i) to answer fully and satisfactorily any question lawfully put to any such person in terms of section 13(3);
 - (ii) to produce any book, document or object in any such person's possession or custody or under any such person's control which any such person was required to produce in terms of section 13(3)(e);
 - (e) with intent to deceive the Tribunal, produces before the Tribunal any false, untrue, fabricated or falsified book or document;
 - (f) wilfully furnishes the Tribunal with information, or makes a statement before the Tribunal, which is false or misleading;

- (g) fails to comply with any ruling of the tribunal in terms of section 13(4);
- (h) fails to comply with a request of the Tribunal in terms of section 13(3)(a)(b) or (c);
- (hA) unlawfully locks out a tenant or shuts off the utilities to the rental housing property; or
- (i) contravenes any regulation,

will be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both such fine and such imprisonment.

The challenge all provincial RHTs face is the fact that almost 20 months after the amendment of the RHA, regulations have not been promulgated. In terms of the amendments, section 15(1) states: "The Minister must, after consultation with the standing or portfolio committee on housing and every MEC, by notice in the Gazette, make regulations relating to..."

It has been repeatedly stressed that in view of the clear provision that makes it compulsory for the minister of human settlements to make regulations, and since there is no interim provision for the old provincial regulations to be operative, RHTs are acting outside their powers. Our procedural laws originate from and are deeply embedded in the English civil law system and common law principles. All courts, judicial and quasi-judicial bodies must follow certain procedures, without which, changes are made arbitrarily by RHTs, at the whim of staff and members, and applied inconsistently within a province and also across provinces.

When one compares previous "summonses" of the RHTs one will find that changes are made capriciously and without following the necessary procedures. Significantly, any document ought to be promulgated with regulations or rules or gazetted. The underlying principle is to provide the public, staff,

commissioners, members and legal practitioners, among others, with consistent or uniform documents and legal processes.

In the draft procedural regulations for the RHTs published for public comments in March 2008, it details how complaints are to be lodged; the responsibility of the RHTs on receipt of complaints; procedures to be followed on determination that disputes exist; duties and functions of RHT staff; and annexures that include complaint form, notice of mediation, mediation certificate, summons and subpoena.

Penalties or fines ought to be stipulated in the regulations; they cannot be decided willy-nilly.

It is critical that the public is treated with the respect it deserves and the bodies established at taxpayers' expense provide a competent service.

The minister has no excuse for the delay in promulgating regulations and in ensuring the public gets the best service.

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