

RHTS OPERATE UNDER STRICT RULES

Standardised procedures for dispute resolution governed by two sets of regulations

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The Rental Housing Act 50 of 1999, as amended in May 2008 (Rental Housing Amendment Act 43 of 2007) comes from national government.

In each province, the Minister of Human Settlements (previously housing) may set up a Rental Housing Tribunal (RHT).

In addition to the RHA, the Minister of the Executive Committee (MEC) in the provincial legislature in charge of housing was previously required to tell landlords and tenants about the procedure and more information about unfair practices.

This was done by the MEC for housing through the procedural and unfair practices regulations.

The changes to the RHA in May 2008 placed this responsibility with the national Minister of Human Settlements, making it compulsory for the National Minister to make regulations (Section 15 of the RHA). This is done in consultation with: -

- the MEC for housing of each province;
- the housing portfolio committee;
- the public.
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There are at least two sets of regulations, one contains procedures (Procedural Regulations) and the other relates to problems or disputes arising from unfair practices (Unfair Practices Regulations).

RHTs must follow (standardised) rules, processes and procedures contained in the Procedural Regulations and refer to the Unfair Practices Regulations that list certain categories of unfair

practices and provides explanation thereto.

A ruling of a RHT will most likely contain reference to the relevant regulations.

Any ruling after May 2008 cannot refer to previous provincial regulations since these ceased to exist.

What is the Procedural Regulation?

How does one lodge a complaint with the RHT and what happens to it? What is required of the support staff and members of the RHT?

What is the procedure to resolve a complaint? How is mediation or a hearing conducted and how are mediators and members expected to behave?

What rules must be followed from the time a complaint is lodged to its finalisation?

Answers to these and other questions relating to procedure ought to be found in the Procedural Regulation.

The Procedural Regulation should include:-

- How the RHT must function.
- How to file a complaint.
- A copy of the complaint form, summons and other forms and certificates to be used are part of the Regulation.
- Duties of the staff and the members of the RHT.
- How many days are needed to summon a party or subpoena a witness?
- What fines or penalties are to be paid, and / or the period of imprisonment when a party ignores a

ruling (decision / order / “judgment”) of the RHT?

- How to apply for spoliation, interdict and attachment.
- Mediation and hearing procedures.
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What is an Unfair Practice?

The RHA defines it as “any action, behaviour or conduct by one party that affects the rights of the other party in terms of their contractual relationship.

According to the definition in the RHA, an “unfair practice means any act or omission by a landlord or tenant in contravention of this Act; or a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord”.

The RHA, together with the Regulations, state what the unfair practices are, what the landlord/ lady and tenant must do, and what they are not permitted to do.

Any action that goes against the requirements of the RHA and its Unfair Practices Regulation would affect the rights of one party, thereby resulting in an unfair practice.

Let us take an example to have a better understanding: -

Example of an unfair practice/action

The landlord illegally disconnects the electricity supply to the tenant’s room. The landlord’s action is unlawful and the tenant can lodge a complaint with the RHT.

The RHT can hear matters of this nature and in terms of section 13(12)(c) “issue spoliation and attachment orders and grant interdicts.”

This action is also made a criminal offence (Section 16)

Non-action” / omission may be an unfair practice

Any “non-action” / omission, that is failure to act positively, that goes against the law as stated in the RHA and its Unfair Practices Regulation is

also an unfair practice, as for example the tenant’s failure to pay the rental.

The landlord can lodge a complaint with the RHT or approach a court to recover the arrears.

Unfair Practices Regulations include: -

- the changing of locks;
- deposits;
- damage to property;
- forced entry and obstruction of entry;
- intimidation;
- issuing of receipts;
- tenants committees;
- municipal services;
- nuisances;
- overcrowding and health matters;
- tenant activities;
- maintenance;
- reconstruction, refurbishment, conversion and demolition
- effect of unsigned or undelivered lease agreement

*Dr. Sayed Iqbal Mohamed, chairperson,
Organisation of Civic Rights
Website: www.ocr.org.za
For advice, contact Pretty Gumede or Loshni Naidoo on 031 3046451*