

Regulations cut landlord down to size

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The draft Unfair Practices Regulation to the Rental Housing Act 50 of 1999 as amended include provisions that protect the rights of both parties to a lease contract. Rights also give rise to obligations, that is, duties and responsibilities.

The regulations provide further explanations of what parties must do and what they cannot do and penalties for breaking the law.

They include matters such as the changing of locks, deposits, damage to property, forced eviction, forced entry and obstruction of entry, municipal services, reconstruction, refurbishment, conversion and demolition, issuing of receipts, tenants committees, nuisances, overcrowding and health matters, tenant activities and intimidation.

When a tenant complains to her landlord or after a complaint is lodged with the Rental Housing Tribunal or after the dispute is settled, the landlord may decide to take "punitive" action against the tenant.

This would be an unfair practice in terms of the regulations and the aggrieved tenant would be able to turn to the tribunal or the courts for protection.

However, unless there are regulations dealing specifically with this type of behaviour or action, neither the tribunal nor the courts can do anything.

The following is stated under general provisions, section 13 of the regulations: -

(1) A landlord may not -

(a) intimidate, discriminate or retaliate against a tenant for exercising any right under these regulations, the act, or any other law;

(b) preclude a tenant from establishing or being a member of any tenants committee or any similar body;

(c) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or sent by the tenant;

(d) engage in oppressive or unreasonable conduct;

(e) fail to comply with the tribunal complaint procedures or any agreement concluded with the tribunal or with the tenant through the tribunal's complaint procedures;

(f) conduct any activity which unreasonably interferes with or limits the rights of the tenant or which is expressly prohibited under the lease, these regulations, the act, or any other law; and

(g) induce a person to waive that person's rights under these regulations, the act or any other law, or to withdraw from proceedings before the tribunal.

Unfortunately, the draft regulations are just that, a draft that were published in March 2008 and still need to be signed into law. In other words, as previously stated through this column, the provincial rental housing tribunals do not have the right in law to function.

In 2005 the Western Cape Rental Housing Tribunal had a provision in its regulations that protected a tenant from retaliatory action. A tenant succeeded in her high court application to prevent her landlord from evicting her, arguing that the eviction was based on retaliatory action.

If an eviction is intended, the landlord or landlady must satisfy the court that there is a valid and lawful termination and proof that there is no unfair practice. "... the onus lies on the applicant to allege and prove a valid and lawful termination, which in turn includes the averment and proof that the grounds therefore do not constitute an unfair practice," Knoll J in *Kendall Property Investments v Rutgers* 2005 (4) 81 (C) stated.