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RENTAL TRIBUNALS OUT OF LINE

Two matters violate the rights of tenants and landlords, writes ***Sayed Iqbal Mohamed***

WHEN a ruling is made by a provincial Rental Housing Tribunal (RHT), it is final and, unless it is challenged on procedural grounds by way of review to the High Court, one can consider it to be absolute.

Often, a party that is distressed by the RHT's decision does not have the financial means to bring an application before the High Court.

Two significant matters are violating the rights of tenants, landlords/landladies: the absence of regulations and in some RHT's the appointment of members contrary to statutory procedures.

In the latter instance, this means people serving as commissioners may not have the qualifications detailed in the Rental Housing Act (RHA).

It can be argued that the RHT is not properly constituted when prospective commissioners are not interviewed by the provincial human settlement (housing) portfolio committee or, at the very least, have their applications approved.

The MEC for Human Settlement has no choice but to present the applications to the portfolio committee, without whose sanction an RHT is not properly established (Section 9(2) of the RHA).

Applicants for the Western Cape RHT, for example, are subjected to rigorous interviews and must satisfy the categories enacted by Parliament in the Rental Housing Act.

A person cannot qualify retrospectively because of several years of service at the RHT nor for having an outstanding legal background.

The other challenge is the failure to have the Unfair Practice and Procedural Regulations in place. There is a mistaken view that until such time regulations are in place. RHTs can rely on the old provincial regulations.

Those who know how to read the law will inform you that RHTs are acting outside the powers required by Parliament.

The national Human Settlement Ministry has conceded that regulations do not exist.

Procedure

But when a party comes up before the RHT for a hearing or fails to do so, certain procedure is followed.

Let us take for example a recent matter where one party failed to attend a hearing.

The Rental Housing Tribunal proceeded in the absence of the respondent and after hearing evidence from the complainant ruled that the tenant had to pay the increased rental, backdated to 2009.

The so-called notice of increase was defective and constituted, on the worst legal advice, an offer to increase.

The tenant continued to pay the old rental and therefore did not vary or agree to the increase. In other words, the tenant expressly rejected the mere offer to pay more rent.

South African courts have consistently applied this common law and the RHT has no constitutional mandate or legal jurisdiction to overturn an established legal rule.

The ruling of a few lines does not show how the RHT commissioners concluded that the tenant was obliged to pay the rental increase.
On what basis in law did the RHT hold a hearing when regulations do not exist?

Section 15 of the RHA as amended, reads:
(1) The minister must, after consultation with the standing committee or portfolio on housing and every MEC, by notice in the Gazette, make regulations relating to
(a) anything which may or must be prescribed under Chapter 4;
(b) the procedures and manner in which the proceedings of the tribunal must be conducted;
(c) the forms and certificates to be used;
(d) the notices to be given by the tribunal in the performance of its functions, powers and duties;
(e) the functions, powers and duties of inspectors for the purpose of carrying out the provisions of this Act;
(f) unfair practices, which, amongst other things may relate (categories are listed)
(g) anything which is necessary to prescribe in order to achieve the purposes of this Act.

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