

Reviving Rental Housing Tribunal

Functional legal enforcement mechanism and procedural regulations are necessary

Daily News Tuesday June 30 2009

IN MAY 2008 it was argued in this column that the provincial Rental Housing Tribunals (RHTs) are not capable of enforcing its orders.

In addition to this challenge, the Unfair Practices and Procedural Regulations are not signed into law and RHTs are therefore legally not supposed to hold hearings or mediate complaints.

In terms of the government's objective of service delivery, the RHTs have failed the public while members of the RHTs painstakingly deal with conflicts daily without authority and enforcement mechanisms.

The RHTs are said to have no "teeth" since they cannot enforce rulings and cannot (after serving a subpoena) compel a witness to attend or to have a party produce documents.

Seven years after the establishment of the RHTs, enforcing its rulings still pose the greatest challenge.

Attempts to introduce a provision to enable RHTs to review its own ruling or set aside its order would contradict section 13 of the Rental Housing Act 50 of 1999 as amended (RHA).

Magistrates do not "self-review" or set aside their judgments.

The members of the RHT are said to be *functus officio* and the doctrine of the *res judicata* rule applies. If a party ignores a summons to appear before the RHT, there is no recourse to hold the party in "contempt of court" and to compel the party to attend a hearing or to comply with any orders or rulings.

The additional powers given to RHTs, such as attachments, interdicts and spoliation, have been a disaster with complainants being referred to attorneys or Legal Aid to be sent back to the RHTs.

The need for Regulations cannot be overlooked since it is

a requirement by an Act of Parliament.

A legal challenge would stop RHTs from functioning with serious consequences for the many thousands of decisions made since May 2008.

Similarly, the need for enforcement is critical.

The amendments, particularly regarding section 13 of the Rental Housing Act 50 of 1999 ("the RHA") needs to be examined to find a practical solution.

The amendment of section 13 of the RHA reads: -

1. makes a ruling of the RHT an order of a magistrate's court in terms of the Magistrates'

Courts Act, 1944 (Act No. 32 of 1944);

2. and, is enforced in terms of that Act.

What constitutes an order of a magistrate's court?

A judgment of a magistrate's court in civil cases "includes a decree, a rule and an order"[1].

Who enforces judgment of magistrates' courts?

A sheriff [2] enforces a decree, a rule and an order of a magistrate's court

Conversion into a magistrate's court order

Since a ruling of the RHT is deemed to be an order of a magistrate's court, and the amendment of the RHA would make a ruling enforceable in terms of the Magistrates' Courts Act, a ruling could be transferred to the magistrates'

courts to be converted into a magistrate's court order.

The clerk of the magistrate's court would then number the RHT's ruling with a consecutive number for the year during which it is filed [3].

The process for the execution of any ruling of the Rental Housing Tribunal for the surrender of movable property shall be by warrant issued and signed by the clerk of the court and addressed to the sheriff.

The ministers and department heads of housing and justice have to acknowledge the serious collapse of the RHTs' orders.

There must be an undertaking to effect the necessary changes in the relevant legislation, including the Procedural Regulations of the RHA, within a short period.

Failure to do so will further humiliate members of the RHTs and support staff while the public has already lost confidence in the RHTs.

Parties seeking relief from the RHT will be prejudiced by the delay due to implementation problems regarding rulings and compliance of other orders, resulting in financial loss and frustrations.

Footnotes

[1] S1 Magistrates' Courts Act, 1944 (Act No. 32 of 1944) [2] s 13-15 ibid [3] Rules 3-4 Magistrates' Court Act [4] Government Notice R1411 in Government Gazette 19435 of 30 October 1998

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