Time to assert citizens' rights

RHTs hamstrung by inadequate framework

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SOUTH Africans are generally passive when it comes to asserting their rights.

This is particularly evident when parties are subpoenaed or served with summons to appear before the courts.

The mere thought of attending a court proceeding can be intimidating.

Should parties be aware of the procedures meticulously laid down in court rules and where these are not followed for whatever reason, they will not protests the infringement of their rights.

Let us take the provincial Rental Housing Tribunals (RHTs), where parties, as complaint and respondent (landlord / landlady and tenant) are expected to have their dispute heard.

Should the RHT inform the parties of a hearing by giving them inadequate notice period, they have the right to challenge the short notice period. Almost a decade later, no proper rules exist, so the RHTs "thumb suck" rules; sometimes to protect administrative bungling.

Why are rules required?
It may be necessary for parties to prepare for the case, examine the RHT's file, and if need be, engage the services of an attorney. A fundamental rule of natural justice is that a party must be given a fair hearing: the *audi alteram partem* rule.

This means that parties be given an opportunity to state their side of the case. It is a Latin phrase that means, "hear the other side".

This rule includes parties to a hearing or court proceedings being given the opportunity to state their case, to dispute or challenge through cross examination the evidence given by the other party and any witness, the notice period for a hearing and how to respond to legal service.

At common law, it is one of the fundamental principles of natural justice (De Lange v Smuts NO and Others 1998 (3) SA 785 (CC)).

The notice period is crucial.
Improper service by the tribunal, such as a party being given short notice, affects the right to a fair hearing that can be challenged.

The Rental Housing Act 50 of 1999 as amended (RHA) did not codify landlord-tenant laws which are rooted in the common law and developed in law of contract, other legislation and decided cases. It has changed some aspects of the common law and restricted a few of the contract law requirements.

The RHA and its regulations are therefore not exclusive, because other relevant laws, such as the common law, law of contract and the constitution, also apply to residential leases.

The fact that there are no regulations means that RHTs cannot hold hearings, schedule mediations or accept complaints. So unfortunately the seven provincial RHTs that are in existence are acting "unlawfully".

Also of significance is the composition of the RHT. Except for Gauteng and Western Cape,, the requirement demanded by Parliament is largely ignored and the appointments not subjected to a thorough interview process by the housing portfolio committee.

The result is a skewed, biased body with a poor track record that is evidenced from a large number decisions.

The public should not hesitate to register their complaint with the Minister regarding any semblance of tardiness, blurring of roles, or any matter that prejudices their rights in terms of the Rental Housing Act, regulations and rules of natural justice.

In fact, citizens need to ask why Regulations do not exist for the RHTs, without which, the RHTs cannot operate.
It is a statutory requirement that members must represent a diverse experience and expertise other than law. In fact, law is not a requirement (section 9(1) of the RHA as amended).

It is a statutory requirement that members' appointments must come before the housing portfolio committee (section 9(2)). It is a statutory requirement (made by Parliament) that unfair practices and procedural regulations must be in place (section 15).

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