

# Court final test for 'rules'

## Sectional title regulations may not infringe on constitutional rights

THE opinions expressed through this column are intended to provide guidelines to people who need to know what about their rights and duties.

In the process of disseminating such information, it is also intended to educate and empower people to protect the law that is violated and the rights of individuals or interest groups.

Some legal practitioners do not take kindly to a lay person challenging what appears to be unlawful, oppressive and simply nonsense masqueraded as the law. Presenting such persons with cogent, legal arguments further infuriates them, compelling a need to exert 'legal' authority.

It is not unusual to be told that expert legal opinion supports a particular unlawful conduct or provision to be inserted into existing rules. This can lead to a deep sense of disappointment and even prove daunting for one who zealously adheres to a set of legal rules, procedures and norms.

Legal opinions are crucial, particularly when a certain aspect of the law is thoroughly researched. A situation is evaluated based on facts, the applicable statutes (law) and relevant judgments. Even then, the opinion remains just that, a legal opinion - unless it is tested in court.

Should a rule for ejection of a tenant or depriving ownership be introduced based on a particular view of a judge in a specific instance, it is possible to challenge this all the way to the Constitutional Court.

### **Subservient**

A judgment allowing for a particular enforcement power against a tenant and her

landlord will have to provide a detailed explanation relying on support from legal sources that the law of contract, the common law and the Rental Housing Act in respect of the tenancy relationship can be made subservient to a conduct rule.

The courts will give a final order based on competing interests and diverse laws that operate in a sectional titles scheme.

A written legal opinion ought to have the name of the person(s) and contact details so that one can verify if her or his name is not used fraudulently. The integrity, knowledge, expertise and character of the legal advisor may be captured in one written opinion, or even in a single incisive view. This said, one has the right to ask for a written opinion if it is alleged that one exists that contradicts a given legal situation.

As previously stated, sectional title is perhaps the most contentious subject matter involving various stakeholders (owners, trustees, tenants, supervisor and managing agent). This delicate but complex relationship can turn into 'lawlessness' when there are unscrupulous absentee owners, recalcitrant tenants, an inexperienced agent and an authoritarian supervisor.

In an attempt to get things streamlined and without being able to resort to legal expenses, additional rules are introduced. Often, it is a desperate cry from persons who have invested their life savings to have undisturbed use and enjoyment of their homes and to prevent the deterioration and eventual collapse of the scheme.

It would be interesting to have sight of an alleged legal opinion that encourages

stakeholders in a sectional titles scheme to subvert the law as it were, and one that boldly proclaims that individual's rights can be violated. The resolve of the majority not to succumb to such an opinion can be safe guarded by placing on terms the advocates of such a view.

Let those who believe they have it on "authority" that unlawful measures can be introduced to take the matter to court.

### **Adverse**

Ask the court for an adverse cost order against such "opinionated" persons.

Rules are one of the most contentious subject to the point that racism is often brought into the dispute by parties.

In the meantime, the following are guidelines to protect you from being sued.

These are, in our view, examples of rules that are not lawful even if introduced in Management, Conduct or so called House rules with 100 percent endorsement: -

- The right to interview or screen a prospective tenant. Anyone who claims it can be done should be challenged to produce written legal opinion.
- The right to limit a prospective tenant by age (e.g. 24 years as the baseline to qualify as a tenant).
- Owner expected to pay an increased levy because of her tenant's new born baby.
- A couple can be (unlawfully) evicted because of their newborn child since the lease stipulated two occupants.
- A couple is required to pay additional monthly service charges for the new born who is deemed half an adult.

- Disconnecting electricity and water supply due to non-payment of levy or rental or for any other reason. No one is allowed to take the law into her or his own hands. This law goes back several thousand years and firmly entrenched in our legal system.

The chief registrar of the deeds office has indicated that he will not accept an amended rule that gives a body corporate the authority to interview a prospective tenant by trustees or a rule that seeks to restrict the number of occupants.

Should the registrar accept such a rule, this may result in a legal challenge.

Certain trustees and supervisors implement rules that conflict with people's constitutional rights and infringe other laws enacted by parliament.

It is obvious that bodies corporate and share blocks have to overcome challenges posed by certain "criminal" owners and tenants who have no qualms about shutting down a scheme through their (mis)conduct. Such persons need to be dealt with according to the relevant law.

The challenge is a simple one. Anyone who claims that an unlawful rule or measure can be used or made lawful by amending the conduct rule must be asked to take the matter to court.

If a legal opinion of sorts is used to intimidate, ask for a written copy and get an opinion of your own from a legal expert in the field.

Do not allow yourself and the body corporate to be taken to task, especially by unscrupulous owners and tenants. Protect yourself, the scheme and the law.

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