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Landlord wins case on appeal

High Court changes tribunal's ruling

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IN PERRYVALE Investments (Pty) Ltd v S. Patel N.O. and Michael Katz (1309/2005) [2008] CPD (25 July 2008,) the Western Cape Rental Housing Tribunal's (WCRHT) ruling against a landlord was changed by the High Court.

What was significant was that at the time of the complaint, the WCRHT had regulations in place. The court also had access to the record of the WCRHT's proceedings. The transcript contained evidence of the parties, and its ruling was meticulous and detailed. The landlord turned to the High Court by bringing an application in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

Western Cape Rental Housing Tribunal

The matter before the WCRHT related to a dispute between the tenant, Michael Katz, and his landlord, Perryvale Investments (Pty) Ltd, regarding his landlord's: -

1. Failure to do maintenance in terms of section four of the Unfair Practices Regulations published in terms of the Act
2. Failure to allow remission of rental in terms of section five of the unfair Practices Regulations

Below are excerpts from the WCRHT's transcript of the summary of the evidence and its ruling; the evidentiary part is omitted.

"The property in dispute is flat 801 Shelbourne, Beach Road, Sea Point, Cape Town. A complaint was lodged by the Complainant, Michael Katz, hereinafter also referred to as the "Tenant", against the owner of the property, the Respondent, Perryvale investments (Pty) Ltd, represented herein by Mr. P. Kawitzky, also hereinafter referred to as the "Landlord", in respect of two aspects:

1. Failure to do maintenance;
2. Failure to allow a remission of rental.

"Since a lease imposes reciprocal obligations upon the parties, a landlord will not be entitled to claim the whole rent, and conversely a tenant will be entitled to a complete or partial remission of rent (depending upon the circumstances), if the landlord defaults in his obligations to maintain the property or to ensure the tenant has undisturbed use and enjoyment of the property let to him."

"The parties to the lease may by agreement regulate the tenant's right to remission of rent. However, Regulation 9(1)(g) of the Unfair Practices Regulations, published in terms of the Rental Housing Act, 1999 (Act No 50 of 1999) stipulates that a landlord may not induce a tenant to waive his or her rights under the Act, these regulations or any other law.

"Such a clause in a lease agreement would therefore be invalid.

"A reasonable landlord would have, even in the absence of the Act and Regulations, at least investigated the complaint and attended to the maintenance obligations.

Enjoyment

"The facts in this case indicate that the Landlord's serious lack of maintenance contributed directly towards the Tenant's inability to derive proper use

and enjoyment of the property let to him. It is therefore the Tribunal's view that the request for remission of rent was reasonable.

"In the light of the above, the Tenant is entitled to a remission of rent and costs incurred calculated as follows:

50% remission of R 2 500-00 for 24 months totalling R 30 000-00 (September 2002 — August 2004) and
100% remission of R 3 025-00 for 10 months totalling R 30 250-00 (September 2004 — June 2005)
Repairs to ceiling R850.00
Cost of building consultant's report R3000.00
Air Quality Monitoring report R1500.00
Swift Microbiology report R1500.00

Accordingly, the amount to be paid back to the Tenant is 50% of what was paid in rental from August 2002 to September 2004, plus any rental paid after 01 September 2004, plus the R6000.00 paid for the reports stated above, less the amount of R850.00 already deducted from the rental by the Tenant, less R1512.50 rental for July 2004, less R1512.50 rental for August 2004.

"A reconciliation of the amount to be repaid to the Tenant must be provided to the Support Staff within 14 days of the date of this ruling and payment (if any) in terms thereof, must be effected within 7 (seven) days thereafter.

"In respect of the additional claims for compensation, pain and suffering, it is suggested that the Tenant takes this matter up with another court…

"NOTE: It is an offence in terms of Section 16 of the Rental Housing Act, 1999 not to comply with this ruling. If convicted, you may be liable to a fine *or* imprisonment, not exceeding two years or to both a fine and imprisonment.

S. Patel (Chairperson)
Date 23/06/2005"

High Court Order
The landlord, aggrieved with this ruling, approached the High court, which made the following order: -

(a) It set aside the WCRHT's decision dated 5 August 2005 to prosecute the Applicant (landlord)
(b) The Applicant had to provide the WCRHT within 60 days of the order (judgment), a report detailing what repairs and maintenance were carried out in terms of the RHT's ruling in 5 August 2005.
(c) The rental remission was 50% for the period September 2002 until August 2004, less the amount of R850.00, less the amount of R1512.50 rental for July 2004, less the amount of R1512.50 rental for August 2000;
(d) Parties (Landlord and Tenant) would share the costs equally for the building consultant's report (R3000.00); air quality and monitoring report (R1500.00) and Swift microbiology report (R1500.00).
(e) The WCRHT's ruling of 100% rental remission for the period September 2004 until July 2005 was set aside.

COMMENT The WCRHT set out its ruling in a comprehensive manner and applied itself to the issues of law and to the facts of the case.
This ruling was challenged by the landlord who brought an application for review in the Cape High Court.

Relevance
The landlord brought the application in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). The first respondent S Patel N.O. in an Explanatory Affidavit questioned the relevance of PAJA on which the application was largely founded.
The Rental Housing Act (RHA) allows a party to bring review proceedings in terms of section 17.

Judge Dennis Davis, however, made no pronouncement on this issue and the applicability of Paja was left untested.
In fact, the review proceedings in terms of the RHA and the common law, allow the High Court to investigate procedural fairness.
The judge would appear to have applied his mind to an application for an appeal and perhaps considered the tribunal an administrative departmental appendage rather than an independent body with powerful authority.

Michael Katz defended the matter himself and did not have the necessary legal knowledge to challenge this point nor the means to appeal against the courts judgment.