

Operating in legal vacuum

RHTs are not properly constituted, so the decisions are not valid

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IS THE public justified in holding the view that the Rental Housing Tribunal (RHT) is a farce, while millions of rand of taxpayers' money is wasted?

Can the KwaZulu-Natal MEC for human settlement respond publicly in defence of the RHT's credibility?

The RHT is established by the MEC, and not by the department of human settlement (DOHS) and certainly not through the Housing Act. Yet, the notion persists among officials that the RHT is an administrative component of the DOHS.

Members appointed to the RHT are therefore required to follow instructions issued by the officials. In other words, it is deeply etched into the psyche that the RHT, as an administrative functionary similar to ones created by the Housing Act, belongs to the DOHS.

Criticising this mistaken view can lead to serious consequences. Besides, some members prefer to abandon principles for the sake of appointment or re-appointment to the RHT.

Some also wish to protect lucrative government work in addition to serving on the RHT, and dare not criticise.

This mindset prefers being dictated to by officials rather than taking charge of the office to provide a genuine service to the public. Does it matter that a person is illegally locked out or is given a notice to vacate or rental not paid?

There is an infrastructure created by an Act of Parliament (Rental Housing Act (RHA) and

other relevant laws) that allows for disputes between tenants and landlords to be resolved objectively, speedily and without incurring costs.

There is a clear road map for all interest groups. How should a complaint be lodged? What must be done once a complaint is registered with the RHT? How must RHT support staff and members conduct themselves? The rights and obligations of the RHT support staff, mediators, members, complainants and respondents are established.

A number of people are not allowed to lodge a complaint with the RHT because of the latest instructions issued by an official. It is as if a tenant or landlord's complaint is looked at on the spot and a subjective, arbitrary "justice" is handed out.

In reality, a person is denied justice.

There are many cases that are not even considered because every now and then, an official in charge and, it would appear it is the RHT chairperson and members who prefer to be taken charge of, issues instructions that certain complaints must not be considered. Let us examine the statutory requirement for the complaints procedure.

- How does one lodge a complaint with the RHT and what happens to it?
- What is required of the support staff and members of the RHT?
- What is the procedure to resolve a complaint?
- How is mediation or a hearing conducted and how are mediators and members expected to behave?

- What rules must be followed from the time a complaint is lodged to its finalisation?

Answers to these and other questions relating to procedure ought to be found in the Procedural Regulation.

What happens after a complaint is filed?

- The case manager or the staff in charge opens a file and enters the names of the complainant and the respondent into a register.
- A summary of the nature of the complaint and a file (case) number are entered into the register.
- The complaint needs to be investigated by the staff in charge.
- The investigation must establish, among other things, whether the complaint relates to an unfair practice and what documents are required.
- A letter is sent to parties regarding the complaint filed.
- Parties are also informed in writing (notice of mediation or by way of summons) of the date, time and place the case is to be mediated or heard. A copy of the complaint sheet is attached or details of the complaint is provided.
- The RHT can request / subpoena any information (documents such as financial records of the landlord, income of tenant, lease) or persons (witnesses).
- The respondent can also file a complaint against the complainant (“counter-claim”).
- The complaint is resolved through mediation or hearing.
- The RHT must resolve a complaint within three months¹ from the date it was lodged (section 13(7)).

Of course, regulations, procedural and unfair regulations, that should have been in place in terms of the RHA since 2008 have not been made law yet, as confirmed by the Minister of

Human Settlement Tokyo Sexwale. All RHTs are therefore operating unlawfully and all decisions are not valid.

The MEC owes it to the taxpayers to confirm that officials are given powers to run the show, as it were, as well as where such authorisation emanates from and the legal basis for it. She also needs to confirm that no minutes exist regarding the appointment of the present KZN RHT members.

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). It cannot be done retrospectively since this not allowed and in any event, suggest corruption.

As argued previously, a person cannot qualify retrospectively because of several years of service at the RHT nor for having an outstanding legal background. Applicants for the Western Cape RHT, for example, were subjected to rigorous interviews and had to satisfy the categories enacted by Parliament (RHA).

In the meantime, while taxpayers are paying for the RHT members and support staff, tenants and landlords are at a great disadvantage. Tenants, in particular, suffer the greatest injustice, their rights violated by their landlords and then by the RHT. A great number of written evidence exists and continues to increase, without an iota of concern from the MEC.

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¹ *Kendall Property Investments v Rutgers* 2005 (4) 81 (C).