

Question hangs over the status of residents

Are West Point Lodge occupants tenants or 'lodgers'?

IS THE Department of Human Settlements and eThekweni Municipality complicit with the landlord in exploiting certain tenants?

The eThekweni Municipality has granted certain landlords licences to operate 'lodges'. An application is made in terms of the Accommodation Establishment Bylaw (AEB), which must be accompanied by certain requirements, such as a site plan and a layout plan.

The latter requires the applicant to show the location of the cooking facilities, bathrooms, toilets, showers, laundry facilities and the number of people per bedroom as determined by the Slums Act 76 of 1979. (The Slums Act, however, was repealed in 1997).



The submission of these requirements, together with the written consent of the owner, starts a process involving the City Health, Police, Fire and Emergency Department and Metro Police. The relevant departmental officials are required to verify that the applicant's premises meet the stringent criteria laid out in the AEB. After the preliminary inspection and verification, and the subsequent granting of the licence, an official of the Municipality is empowered to carry out in loco inspection at any time to ascertain if the licensee is not in violation of the bylaws.

A case in point is a block owned by the KwaZulu Natal Department of Human Settlements (DHS), West Point Lodge (WPL) situated on the Durban's Esplanade.

This building was bought from private sellers and was one of several buildings that landed the previous head of department in prison for



buying properties at inflated prices through fraudulent deals.

What is interesting is the building is still run by two brothers Dr. Rikesh Maharaj and Anesh Maharaj, many years after ownership passed to the DHS.

The high court did not find the brothers involved in the fraudulent scheme in the sale of their building and they were cleared of any wrong doing.

The Organisation of Civic Rights represents 39 tenants of WPL who asked for intervention relating to the uncertainty of their tenure, maintenance issues and criminal activities such as drug peddling and prostitution.

Several tenants last week were shocked when prostitutes gained access to their flats with their clients. It would appear that the prostitutes were given the wrong (spare) keys and directed to the wrong floor.

Tenants claim that prostitutes use the rooms on short term basis, day and night.

In fact, it was a complaint by one of the owners in the vicinity to the DHS regarding alleged prostitution that placed this building in the public arena through the Daily News.

The brothers deny any knowledge of the alleged criminal activities at WPL. They continue to run the building and collect rentals with the explicit knowledge of the DHS, which has not received any revenue for the past six years but continues to pay rates with taxpayer's money.

According to the tenants, they were at West Point Lodge (WPL) as a result of a verbal contractual agreement. They identified a Mr. Anesh Maharaj of Anesh Maharaj Attorneys, as their landlord.

The building is managed by WPL with no other written communication or information available to the tenants regarding the owner or the landlord.

A letter head of WPL bears a mobile number and a street address, which is that of the building. There is no other information or detail of members, trustees, owners or directors. All written correspondence between

the OCR and Anesh Maharaj ends with Anesh Maharaj Attorneys.

Anesh Maharaj is a hands-on person who intervened recently when a mother apparently abandoned her children.

He was concerned about the possible abuse of these children and personally took them to the hospital. He also decided, out of compassion and necessity, notwithstanding the rule not to allow children, to install a bath tub for the few families with children.

He appeared to have knowledge of every meeting the OCR held with tenants and every site visits and inspection carried out by the OCR and DHS officials.

There is obviously effective communication between the ground staff and himself, in addition to him being personally involved in the building.

In a meeting with him and the tenants' representatives, and his communication with the OCR, he identified violations of the building rules by certain tenants based on his own observation. Given such intimate involvement, one has to agree that there is no criminal activity and no prostitutes operating short-term businesses from West Point Lodge. Some tenants and complainants to the DHS are being somewhat mendacious.

As for the occupants of WPL, Anesh Maharaj believes that they are not tenants in terms of the short-term business licence issued to WPL. This implies that as a 'lodger', created by the landlord with the approval of the eThekweni Municipality, the occupant is treated outside the protection afforded particularly by the Rental Housing Act, law of contract, the common law, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act and the constitution.

The provisions of these laws prevent arbitrary evictions and lock-outs; impose statutory requirement to issue receipts with certain details, provide reasons for the written termination of the tenancy, proper notice period for termination and rent increases and maintenance responsibilities.

While it would appear WPL is permitted to operate as a lodge under a licence by the Municipality, occupants believe that they are tenants paying rentals weekly or by-monthly and issued receipts, even though these fall far short of the statutory requirements.

According to our law, a lease period is definite: daily, weekly, monthly, yearly (periodic leases) or for a specified fixed period. So, are the occupants, tenants or 'lodgers'?

Each household at WPL occupies a room that is partly furnished. Each occupant or household head have brought into their rooms personal items and appliances such as beddings, stoves and refrigerators. There are no separate cooking facilities and no bedrooms.

These are in violations of the licence requirement. In fact, how was a licence approved when the pre-conditions were not met?

There are other multiple violations of the compulsory requirements of the AEB that include the following:-

1. Failure to display a registration certificate in the office or reception area.
2. Failure to display updated bylaws.
3. Failure to display prominently on each bedroom wall that will include: "(a) the floor area of the room in square metres; (b) the maximum number of persons who may be accommodated in that room as calculated in terms of section 13; as shown on the plan lodged in terms of section 3(1) (b) as amended in terms of section 8(2)."
4. No certificate was signed by each occupant that she/he is aware of the displayed bylaws.
5. Section 15 places several responsibilities on the landlord/owner, one of which states that if meals are not provided by the Accommodation Establishment, there must be

permission granted for separate cooking and food preparation facilities, which has to be separate from the bedroom. (There are no separate cooking and food preparation facilities and no bedrooms at WPL).

Is this building therefore a 'lodge'?

City officials have failed to respond to the repeated attempts to explain where the definition of 'lodge' is to be found in the bylaws.

The general definition refers to Masons in the Middle Ages who lived in shelters called lodges that were part of or near cathedrals and castles.

A lodger is also defined as one who rents another person's room, usually a furnished room and lives with the owner.

English and South African case law confirm that a person must lodge in the house of another person and lodge with her or him.

Judge President Gardiner in *Brown v Hayden* 1931 CPD 70 stated:-

"It seems to me that in a contract for the supply of board and lodging there is an implied condition that either party shall conduct himself in a decent and reasonable manner. It is implied because without it the relation of landlord and lodger would become intolerable. They occupy the same house, they are liable to come into frequent contact with one another."

Neither Dr. Rikesh Maharaj nor Anesh Maharaj can occupy, with their 'lodgers', each of the 63 rooms let out on a relatively long term leases and the 19 rooms used for short term accommodation.

Next week, we will discuss the WPL survey results, whether the DHS has taken control of their 'highjacked' building and if the eThekweni Municipality is willing to revoke the licence and investigate how its officials could have approved one in the first place.