

# Ruling must be decisive

## But mediation offers parties opportunity to find compromise

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WHEN a complaint is lodged with the Rental Housing Tribunal (RHT) in terms of section 13, the RHT through its administrative process needs to establish if there is a dispute relating to an unfair practice.

Thereafter, the respondent and complainant are informed of mediation or a hearing. If it is a hearing, parties and witnesses present their sides (evidence) and at the end of the hearing, the RHT is required to “make such a ruling as it may consider just and fair in the circumstances.”

A ruling of the RHT (s13 (13)) is not only the same as a magistrate's court judgment, it is also enforced in terms of the Magistrates' Courts Act. 1944 (Act No.32 of 1944).

Unlike magistrate's court judgments though, a RHT's ruling cannot be appealed to the High court. Its ruling is therefore momentous for most people.

Section 13(4)(c) regarding the RHT's powers states: make any other ruling that is just and fair to terminate any unfair practice, including, without detracting from the generality of the foregoing, a ruling to discontinue –

- (i) overcrowding;
- (ii) unacceptable living conditions;
- (iii) exploitative rentals; or
- (iv) lack of maintenance.

The RHT is under statutory duty to terminate an unfair practice since the Rental Housing Act is

an Act of parliament.

It is a legislation that “is enacted in pursuance of the State's constitutional mandate” (*Kendall Property Investments v Rutgers* [2005]4 All SA 61(C)).

A ruling or judgment must provide relief to the aggrieved party, the very reason for lodging a complaint and parties ought to know what it expected of them.

The ruling or judgment also must be just and equitable and must be decisive.

Peering under the robe, one might also find the subjective nature of the judicial officer's reasoning that is interwoven with the interpretation of the relevant law.

What judges, magistrates and commissioners (members) of Tribunals pronounce may reflect their knowledge of the law; their commitment to dispensing matters with fairness and with moral and legal integrity.

The conclusion and decision contained in an order, judgment or ruling will be sound and objective, and without fear, favour or ineptitude. Tenancy matters that need to be resolved by those who are appointed to bodies who decisions are significant, cannot escape public scrutiny. Let us take the case of tenants who were turned away from the RHT last week, not being able to lodge a complaint.

Their complaint against their new landlord relates to deplorable living conditions and unfair rental increases.

Almost two years ago, they lodged a similar complaint and below, the ruling or judgment that failed to terminate the unfair practice complaints.

In the matter of Mr. T Ngcobo, the

complainant and Mrs. Gasa, the respondent. Ruling on August 3, 2009 of the Rental Housing Tribunal in terms of section 13 of the Rental Housing Act (Act No 50 of 1999) Case No 13/8/3/3/658/09 (The unanimous) ruling of Mrs. P Dabideen (chairperson of the hearing), Prof. B C Dumisa and Mr. M T Magigaba reads:

“Having heard the evidence of all the parties, the KwaZulu-Natal Rental Housing Tribunal makes the following Ruling in terms of Section 13 of the Rental Housing Act (Act No 50 of 1999) :-

“The tenants led evidence that they occupy D1187 Umlazi. This property contains approximately 18 rooms where each Tenant paid R220, 00 including lights and water to the Gasa family who are the landlords.

“The tenants were requested in February 2009 to pay R300, 00 per month as according to them the Landlord had R6000, 00 water bill to pay.

“The tenants refused to pay the new rental as they complained that the Landlord refused to repair the roofs that were leaking.

“The landlord advised that the tenants were not paying any rental at all since April 2009.

“The landlord also advised that the Tenants were supposed to be attending to the renovations themselves.

“The landlord also did not have the money to perform repairs. The report of the inspector then revealed that the roof was in a bad condition and according to the report the property is inhabitable.

“Since the parties were unable to agree on either a rental increase or the repairs, the Tribunal in relying on the report rules the property is inhabitable.”

This was a hearing, not a mediation. It is during mediation that parties are given the opportunity to agree or reach a compromise, failing which, the matter is referred for a hearing. Hearings result in a decisive ruling based on evidence that would investigate, for instance, proof of the actual electricity and water charges, other expenses and income.

There are usually manifold enquiries, which would include circumstantial, legal and evidentiary.

The property is still owned by the Municipality as far as the Municipal records show and therefore no rates payable by the landlord. Deeds search show a different owner.

The landlord at the time of the above hearing was a councilor, his son took control of the leases after his death and the tenants continue to live in inhabitable conditions with a new rental increase looming.

Two tenants were threatened with a lock out and together with the other tenants were turned away from the RHT last week.

Dr Sayed Iqbal Mohamed is the chairperson, Organisation of Civic Rights; Website: [www.ocr.org.za](http://www.ocr.org.za)  
For tenant's rights' advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451