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The Rental Housing Act 50 of 1999



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OVERVIEW

1. Brief overview of the RHA

- Law of general application for all residential leases in all geographical areas
- Common law, law of contract and case law – impact on the RHA/RHT
- Unfair practice
- Rental Housing Tribunal (RHT)
- Issues of rights & responsibilities of tenants' and landlords

2. Applicability of PIE, PAJA

3. Relationship between the RHT and the department of human settlement

4. Jurisdiction of RHT and Magistrates' Courts

- When matters can be adjudicated in the Magistrates' court
- When excluded
- Enforcement of RHT's orders

5. General

THE RENTAL HOUSING ACT 50 of 1999 (“RHA”): amended in 2009

RHA is the law of General Application: Section 36 Limitations: Bill of Rights in the Constitution of the Republic of South Africa, 1996)

- The RHA has modified certain relevant provisions of the common law, the law of contract and abolished the Rent Control legislation.
- applies to all residential tenancies;
- rural and urban leases throughout South Africa;
- deals with the contractual rights of duties and responsibilities arising from a lease agreement (oral, written or partly written and partly oral): -
 - the basic requirements of a lease contract still apply;
 - it empowers parties to a lease contract/protects their rights.¹
 - the RHA protects both tenants and landlords / landladies from exploiting each other and against other forms of **“unfair practices”**;
 - “unfair practice” is a very important part of the RHA that allows parties to lodge a complaint with the provincial RHT;

While the RHA has not codified landlord-tenant relationship, it contains a great deal of essential legal ‘rules’ to bring about (‘regulate’) a measure of balance.

¹ Singh (2007).

The RHA has modified some aspects of the common law & contract law

Examples:

	Common law	RHA
Security deposit	not a requirement	not a requirement BUT once paid must comply with the 'deemed' provisions:
	<p>5(3)(c) the landlord may require a tenant, before moving into the dwelling, to pay a deposit which, at the time, may not exceed an amount equivalent to an amount specified in the agreement or otherwise agreed to between the parties;</p> <p>When is Deposit Refunded? At the end of the lease period. However, the following conditions would apply: -</p> <p>(i) <i>Within seven [7] days</i> (section 5(3)(i)) - when no amount is owed to the landlord / landlady. If there is no arrears, no damage to the dwelling or repairs required by the tenant, the deposit must be refunded with accrued interest within 7 days after the tenant has moved out.</p> <p>(ii) <i>Within fourteen [14] days</i> (section 5(3)(g)) - when amount is owed to the landlord / landlady. The landlord / landlady must refund within 14 days after the tenant has moved out of the dwelling an amount after deducting cost of repairs or any amount for which the tenant was responsible for.</p> <p>(iii) <i>Within twenty [21] one days</i> (section 5(3)(o)) - when tenant refuses joint inspection. The landlord / landlady has to inspect the dwelling after the tenant has moved out and having refused to inspect it with the landlord / landlady within three days before the lease period ended.</p> <p>The landlord / landlady has a total of 21 days from the time the tenant has moved out or became aware that the dwelling was abandoned by the tenant, to inspect the dwelling, carry out repairs and deduct the cost of repairs, arrear rental and cost of lost keys and to refund any money available.</p>	

	Common law	RHA
Receipts	Landlord not required to issue receipts. However, failure to do so on demand by tenants – tenant can refuse to tender rental	<ul style="list-style-type: none"> • must be issued with specific information in terms of the ‘deemed’ provisions: -
	<p>5. Provisions pertaining to leases</p> <p>(1) A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 or 1969).</p> <p>(2) A landlord, must if requested thereto by a tenant, reduce the lease to writing.</p> <p>(3) A lease will be deemed to include terms, enforceable in a competent court, to the effect that -</p> <ul style="list-style-type: none"> (a) the landlord must furnish the tenant with a written receipt for all payments received by the landlord from the tenant; (b) such receipt must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made, and whether payment has been made for rental, arrears, deposit or otherwise, and specify the period for which payment is made: Provided that a Tribunal may, in exceptional cases, and on application by a landlord, exempt the landlord from providing the information contemplated in this paragraph; 	

	Common law	RHA
“UNFAIR PRACTICE”	Does not exist	Introduced by the RHA <i>‘exclusive jurisdiction’</i>
<p>s1 Definitions: “unfair practice” means (a) any act or omission by a landlord or tenant in contravention of this Act; or (b) a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord”</p>		

Unfair Practices and the RHT²

Kerr (2004) draws our attention to the fact that the RHA does not prevent the courts’ jurisdiction regarding unfair practices. ‘It must be remembered that although unfair practices fall within the jurisdiction of Rental Housing Tribunals the Act stipulates at the beginning of subsection 5(3) that the invariable obligations it prescribes in that subsection are “enforceable in a competent court”’ (509).

According to Mukheibir (2000:343) the RHT has exclusive jurisdiction regarding unfair practices. Her notion of the RHT having exclusive jurisdiction finds “support” in at least two instances. A magistrate’s court **may** refer an unfair practice at any stage of its proceedings to the RHT. “A magistrate’s court may, where proceedings before the court relate to a dispute regarding an unfair practice as contemplated in this Act, at any time refer such matter to the Tribunal” (s13 (11)).

Section 13(9) states: “As from the date of the establishment of a Tribunal as contemplated in section 7, any dispute in respect of an unfair practice, must be determined by the Tribunal unless proceedings have already been instituted in any other court.” This section provides strong support for the RHT’s exclusive jurisdiction over unfair practices.

Knoll J³ in reference to the unfair practices provision says that the RHA “[a]lso introduces the concept, previously unknown to the common law or contained in rents legislation, of the “unfair practice” (at 65) and that section 13(9) of the RHA is stated in peremptory (absolute, unconditional) terms (at 67).

Inherent jurisdiction of the courts

Our superior courts, following the English common law principle of inherent jurisdiction, have powers to hear any matter before it unless an Act of

² Mohamed, S.I. (2010). Tenant and Landlord in South Africa: The handbook for residential tenancies and the Rental Housing Act. Organisation of Civic Rights. Durban, South Africa.

³ *Kendall Property Investments v Rutgers* 2005 (4) 81 (C).

parliament (statute) prevents it by granting exclusive jurisdiction to another court or institution. While the concept of unfair practices is unique to the RHA, it can be argued that the superior courts are not precluded from hearing unfair practices. The RHA is silent about proceedings regarding unfair practices before superior courts.

RHT and the courts

The question still remains: does the RHA prevent courts from determining unfair practices disputes? According to Kerr (2004) the court's powers are generally retained by the deemed provisions or invariable (unchanged) obligations contained in 5(3) and also 13(10) of the RHA. Section 13(10) allows a tenant or landlord / landlady to approach a competent court: -

1. for urgent relief
2. in the absence of a dispute regarding an unfair practice
 - 2.1 to recover arrear rentals
 - 2.2 institute eviction proceedings

RHT and “exclusive” jurisdiction

The RHT does appear to have “exclusive” jurisdiction regarding unfair practices. Where a party has lodged a complaint with the RHT, it may be argued that the courts are prevented from adjudicating the complaint because the RHT must settle the unfair practices dispute. “Any other court” would include the magistrates’ courts and the superior courts.

An unfair practices dispute must therefore be settled by the RHT unless a party instituted action in any other court prior to the establishment of the RHT. The RHT could be understood to have “extraordinary” powers to deal with unfair practices but being a creature of statute (the RHA is an Act of parliament), it does not have inherent jurisdiction.⁴ Courts cannot exceed their jurisdiction⁵ and must exercise the powers conferred upon them with caution.

The RHT is not a court and must exercise greater care. In resolving disputes regarding unfair practices, either through its mediation process or adjudication through a hearing, the RHT must conduct itself with extreme vigilance. While not a court, the RHTs perform a judicial function and have more powers than an arbitrator or an administrative Tribunal, the latter two functions are like that of a judge.⁶

⁴ *Omnia Fertilizer Ltd v Competition Commission; Competition Commission of South Africa v Sasol Chemical Industries (Pty) Ltd and Others* 2008 JOL 22197 (CT).

⁵ *Supreme Court of Canada, College Housing Co-operative Ltd. v Baxter Student Housing Ltd*, 1976 (2) S.C.R. 475.

⁶ *Knop v Johannesburg City Council* 1995 (2) SA 1 (A).

*Unfair practices*⁷

Some of the unfair practices that apply to	Landlord	Tenant
Damage to property	<ul style="list-style-type: none"> • by tenant, her family members or visitors 	<ul style="list-style-type: none"> • changing of locks to prevent tenant's entry
Security deposit		<ul style="list-style-type: none"> • failure to refund security deposit
Eviction	<ul style="list-style-type: none"> • refusal to vacate 	<ul style="list-style-type: none"> • unlawful eviction
Changing of locks	<ul style="list-style-type: none"> • obstruction of entry when reasonably required, e.g., for necessary repairs; inspection; viewing by prospective buyer or tenant 	<ul style="list-style-type: none"> • forced entry into the leased dwelling by landlord or his representative • as a way of evicting without a court order
House rules	<ul style="list-style-type: none"> • not adhering to rules, e.g., disturbing neighbours' peace and quiet enjoyment by playing loud music 	<ul style="list-style-type: none"> • changes without tenant's consent; introducing changes as a subtle way to alter the lease • applied selectively, that is, to some tenants

⁷ Mohamed. S. I. (March 2010). Dispute resolution Guide: A proactive approach to tenant landlord dispute resolution. Gauteng: Social Housing Foundation.

Intimidation	<ul style="list-style-type: none"> • tenant threatening violence for a lawful termination of lease 	<ul style="list-style-type: none"> • tenant intimidated into paying an unjustified rental increase
Receipts		<ul style="list-style-type: none"> • landlord refuses / fails to Issue receipts: must be issued for proof of payment by tenant and to avoid dispute
Tenants' committees		<ul style="list-style-type: none"> • formation prevented; intimidated; refusal to recognise
Nuisances	<ul style="list-style-type: none"> • tenant or family members or visitors slamming doors; noisy; 	
Overcrowding and health matters	<ul style="list-style-type: none"> • landlord allowing overcrowding; or forcing overcrowding to generate high rentals; • landlord ignoring or negligent about rodent infestation; dampness on walls, leaking roofs 	<ul style="list-style-type: none"> • tenant breaching lease by overcrowding; • refusing to use refuse bins – leaving waste outside the unit or in area not designated for refuse
Maintenance	<ul style="list-style-type: none"> • dwelling at the commencement of the lease is not in a condition that is reasonable fit for human habitation (as required by the UFPR); • fails to take reasonable steps to ensure that the tenant enjoys undisturbed use of the dwelling 	<ul style="list-style-type: none"> • fails to maintain the dwelling in a clean, tidy and safe state of repair • fails to carry out repairs that she/he agreed to

Municipal services	<ul style="list-style-type: none"> • fails to provide water, electricity or gas services as agreed • interrupting supply of services without a court order 	<ul style="list-style-type: none"> • fails to make payment for the consumption of water, electricity or gas or other services as per agreement • tampers with the meter – illegal reconnection of services
Reconstruction, refurbishment, conversion and demolition	<ul style="list-style-type: none"> • failing to reduce rental for the period during which the tenant is not in occupation; • tenant is prevented from returning to the dwelling after the completion of the repairs, conversion or refurbishment 	<ul style="list-style-type: none"> • refusing to vacate on proper notice and proof of repairs, conversion or refurbishment needed
Effect of unsigned or undelivered lease agreement	<ul style="list-style-type: none"> • tenant failing to sign and deliver written lease agreement 	<ul style="list-style-type: none"> • landlord failing to sign and deliver written lease agreement

Jurisdiction of RHT and Magistrates' Courts

- When matters can be adjudicated in the Magistrates' court
- When excluded
- Enforcement of RHT's orders

RHT	MAG Court
order deemed s13(13)	may refer to RHT s13(11)
jurisdiction on unfair practices (s13(9)): must be determined by RHT	S13(10) in the absence of unfair practice
s13(9) read with s13(10) gives the RHT "exclusive" jurisdiction	

<i>excluded</i>	eviction s13(14)	
<i>included</i>	<ul style="list-style-type: none"> ■ spoliation ■ interdicts (types not clarified) ■ attachment (landlord's lien) 	13(12)(c)
	<ul style="list-style-type: none"> ■ ruling as to cost- 	13(12)(a)

s 13: Complaints

(9) As from the date of the establishment of a Tribunal as contemplated in section 7, any dispute in respect of an unfair practice, must be determined by the Tribunal unless proceedings have already been instituted in any other court.

(10) Nothing herein contained precludes any person from approaching a competent court for urgent relief under circumstances where he or she would have been able to do so

were it not for this Act, or to institute proceedings for the normal recovery of arrear rental, or for eviction in the absence of a dispute regarding an unfair practice.

(11) A magistrate's court may, where proceedings before the court relate to a dispute regarding an unfair practice as contemplated in this Act, at any time refer such matter to the Tribunal.

(12) The Tribunal may -

- (a) make a ruling as to costs as may be just and equitable;
- (b) where a mediation agreement has been concluded pursuant to section 13(2)(c), make such an agreement a ruling of the Tribunal; and
- (c) issue spoliation and attachment orders and grant interdicts.

(13) A ruling by the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No.32 of 1944) and is enforced in terms of that Act.

(14) The Tribunal does not have jurisdiction to hear applications for eviction orders.

No rules / regulations in respect of processes, procedures and proceedings- thumb sucked – *audi alterm partem* rule