

Tribunal is failing tenants

RHT's job is to mediate impartially, but it often takes the side of landlords

By Sayed Iqbal Mohamed

WE recently highlighted, through this column, how the people who approach the KwaZulu-Natal Rental Housing Tribunal (RHT) are denied justice.

Subjective, arbitrary "justice" is handed out on the spot.

It would appear that the public was justified in holding the view that the Rental Housing Tribunal (RHT) is a farce. Can the KwaZulu-Natal MEC for human settlement respond publicly in defence of the RHT?

Since the column appeared, more people were turned away leading to increased suspicion that the RHT is pro-landlord. More people are discussing their experiences and the utter failure of the support staff and members to act objectively, in accordance with statutory requirements and discharge their responsibility.

These are strong criticisms that should evoke the ire of the RHT and be defended by the MEC.

This would then allow for a case-by-case examination of problems in the organisation which is perceived to be an outrageous operation. Bearing in mind that six of the seven members are legal practitioners, there ought to be no doubt about their roles as mediators and about the application of legal principles and the relevant laws.

There is no way that the RHT, whose ruling is an equivalent of a magistrate's court can conduct itself unashamedly in such a subjective way.

The notion that the RHT is a landlord organisation may not be far-fetched when one examines events of the past month.

Tenants who were locked out were turned away, as were tenants who suffered illegal disconnection of services and notices to vacate.

The Organisation of Civic Rights (OCR) and the Legal Aid Board continue to assist such tenants, whose rights are being violated. Tenants with notices terminating their tenancies are regularly turned away. They are told to accept the notices and to move out.

A recent Supreme Court of Appeal case laid down further requirements for evictions and while the RHT has no power to grant evictions, any complaint of an unfair practice must be investigated through mediation and a hearing.

A tenant who challenged a notice to vacate and a rent increase had her file closed by the mediator because he was convinced of the landlord's version. The mediator is supposed to be neutral and being a member of the RHT, more wary of not acting as prosecutor, adjudicator and judge.

There are many instances of such sham and shame.

Perhaps one may get a better perspective of a case in point. An Anzian Ahnad Suleman approached the RHT with a notice he received from a law firm, Conveyancers & Notaries Public giving him notice to vacate the room in the building on 145 Prince Edward Street, Durban.

The RHT turned him away. He was not allowed him to lodge a complaint. He was informed that the notice was proper and he needed to move out. The complaint was not entered into a register to be followed by an investigation and to be mediated or heard for an objective assessment of the tenant's complaint of an unfair practice.

Suleman subsequently found himself locked out; his gate padlocked even though his rental for November was paid. The RHT did not intervene even though the Rental Housing Act empowers it as other laws give the magistrate's court and the higher courts the power to stop an unlawful conduct and to give the tenant rightful access to the property with immediate access.

He was turned away twice and in both instances, the RHT protected the landlord rather than implement the law. When he approached the OCR, he was barely able to communicate; because he is diabetic and his insulin was locked in his dwelling. The OCR sent a letter of demand to the landlord's attorneys, that Suleman be given immediate access to his room.

The landlord, on his attorney's instructions, contacted the OCR and Suleman was given unconditional occupation the same day. The letter below gives a glimpse of the chain reaction caused by the unlawfulness of the landlord and RHT's conduct, having a negative impact on a poor tenant.

"open letter"

Dear Sir / Madam

**RE: MR. A J SULEMAN, ISMAIL BUILDING,
145 PRINCE EDWARD STREET, DURBAN /
ILLEGAL EVICTION**

We act for Mr. Suleman.

We confirm a telephonic discussion this morning between Loshni Naidoo from our offices and a Ms. Rajmun: -

- 1.1 Our client was illegally locked-out yesterday.
- 1.2 Ms. Rajmun indicated that our client was given a notice to vacate and has thus failed to give vacant occupation.
- 1.3 Our client intends to proceed with an urgent application if your client fails to give our client immediate possession of his dwelling.
- 1.4 Ms. Rajmun was asked to communicate same to the landlord.

2. We require your client's full details to be given to our offices not later than 13h00 today, irrespective of whether our client is restored possession or an application made in this regard.
3. While our client disputes the validity of the notice to vacate, there is no legal basis to unlawfully dispossess him and his wife of

occupation. Our client is diabetic and his insulin is locked in the dwelling, further compounding his situation.

4. Be that as it may, our client demands immediate and unconditional restoration of the dwelling to him, failing which, an urgent application will be served on your offices with your firm of attorneys cited as the respondent.
5. The reason for this instruction is the fact that our client has no details of his landlord and the so-called notice issued by your office fails to provide who instructed your office and which dwelling is the subject of the alleged notice to vacate.
6. We are further instructed to reiterate, that without further notice, to bring an urgent application in the event our client is not given unconditional and immediate possession of the above dwelling.
7. Under the circumstances, the court will be asked to make an adverse cost order against your client as well as an order *de bonis propriis*.

Our client's rights are expressly reserved including all costs affecting his health and alternate accommodation.

Yours faithfully
Sayed Iqbal Mohamed (Dr.)
Chairperson; director of projects

After the tenant was given access, the landlord's attorneys issued a notice to vacate addressed to and served on the OCR. The OCR is not going to lodge a complaint with the RHT.



Ismail's building, 145 Prince
Edward Street, Durban

Ahnad Suleman showing Pretty Gumede of the OCR where the gate was padlocked