

Validity of legal authority tested - Rental Housing Tribunal challenged

When Marlize van der Walt of Rustenburg, North West Province, received a notice of rent increase in January this year, she challenged it. The landlord, Light House Children's Shelter, later requested that she sign a written lease.



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Van der Walt refused, since she was not obliged to enter into a written lease and saw it as an attempt to change the conditions of the oral lease.

Towards the end of April she received a letter from Parsons Attorneys who, on the instructions of her landlord, terminated her lease.

The reason for termination was her failure to enter into a written lease. When the attorney was informed that the termination had no legal basis, his response was that his instructions was to approach the court to proceed with eviction.

Correspondence only intensified the notion that there was 'no binding contract' and legal action will most certainly follow if the tenant failed to move out at the end of May.

Van der Walt reiterated that she would hold the landlord liable for legal costs because she would defend the eviction in court. She indicated the following to Parsons Attorneys through her representative: -

1. She was not obliged to enter into a written agreement in terms of the common law, law of contract and the Rental Housing Act.
2. The cancellation therefore had no legal basis.
3. In terms of the Rental Housing Act, the said cancellation constituted an unfair practice.
4. Accordingly, the landlord had no cause of action.
5. In the event his client pursued legal proceedings, van der Walt reserved her rights for a punitive cost order, and, that this should be clearly conveyed to the landlord.
6. Entirely without prejudice, van der Walt was willing to resolve the matter amicably.

The tenant subsequently received a summons, not from the courts, but from the North West Rental Housing Tribunal (NWRHT). The complaint related to the eviction of the tenant lodged by the landlord.

A letter was sent to the manager of the NWRHT that it did not have the power to deal with eviction.

In fact, the legislature had specifically excluded the Tribunals' jurisdiction in the Rental housing Act 50 of 1999 as amended. In terms of section 13(14) it states: "The Tribunal does not have jurisdiction to hear applications for eviction orders."

The NWRHT was also requested to provide proof of the Procedural and Unfair Practices Regulations that must be in place to hear any complaint.

The following day, a new summons was served on the tenant under the same case number with a different complaint. Van der Walt was summonsed to a hearing regarding the termination of the lease.

Again, a letter was sent to the NWRHT, hand delivered, faxed and emailed to the manager requiring proof of the regulations so that the tenant could prepare her case and seeking clarity on the jurisdiction or powers it had to terminate a lease.

On Friday, July 29, 2011 the NWRHT held the hearing even though no answers were given to the tenant. The landlord's attorney attempted to get the rent increase, which was not even the complaint on the summons.

This was refused, but the NWRHT granted a termination, requiring van der Walt to move out end of August.

The Rental Housing Tribunals, as mentioned previously, are bound by the

decisions of the higher courts, including the Supreme Court of Appeal.

Courts do not substitute for landlords or tenants, terminating leases on behalf of any party. Courts cannot act for parties nor decide for them. It pronounces on the validity of a cancellation and if properly terminated, grants an eviction if such relief is sought.

"What is evident is that neither the Constitution nor the value system it embodies give the courts a general jurisdiction to invalidate contracts on the basis of judicially perceived notions of unjustness or to determine their enforceability on the basis of imprecise notions of good faith", Cameron JA in *Brisley v Drotzky* 2002 (12) BCLR 1229 (SCA).

Judge Brand of the SCA (in *South African Forestry Co Ltd v York Timbers Ltd* 2005 (3) SA 323 (SCA)) held: "[A]lthough abstract values such as good faith, reasonableness and fairness are fundamental to our law of contract, they do not constitute independent substantive rules that courts can employ to intervene in contractual relations. These abstract values perform creative, informative and controlling functions through established rules of the law of...contract.

"They cannot be acted upon by the courts directly. Acceptance of the notion that judges can refuse to enforce a contractual provision merely because it offends their personal sense of fairness and equity will give rise to legal and commercial uncertainty. After all, it has been said that fairness and justice, like beauty, often lie in the eye of the beholder."