

# **PRELIMINARY DISCUSSION DOCUMENT ON THE RIGHTS & OBLIGATIONS OF TENANTS AND LANDLORDS**

**SUBMITTED BY THE ORGANISATION OF CIVIC  
RIGHTS [OCR] TO THE MINISTER OF HOUSING,  
MS. SANKIE D MTHEMBI-MAHANYELE**

**This proposal played a major part in shaping the new law in the form of the Rental Housing Act (RHA) and provincial Tribunals for all South Africans involved in residential leases.**

**The Preliminary Discussion Document was followed by intense negotiations with the Minister and Department of Housing; with the OCR being part of the national Task Team advising the Minister on the proposed new law. Substantial part of this Document is contained in the RHA.**

*OCR is indebted to MISEREOR whose funding partnership together with Ashoka's global fellowship, contributed to one of the most significant changes in tenant-landlord legislation in South African history*

September 1996



Empowering the public

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## ACKNOWLEDGEMENT

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**OCR** gratefully acknowledges MISEREOR's funding for the Tenants' Rights project to develop Tenants' Rights Legislation. MISEREOR's support and partnership, God willing, will make the difference for the millions of tenants in South Africa.

### **COPY RIGHT**

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## INTRODUCTION

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*“Rented accommodation, inner city slums, informal settlements, displacement through forced evictions, conversion of residential stock and exorbitant rentals, are characteristics of South African cities as they are of “first” and “third world” cities.*

*The struggle locally is no different from those of tenants internationally. In the United States of America for instance, the courts have refused to recognise housing as a fundamental right.”<sup>1</sup>*

One third of the total formal housing stock is occupied by tenants and issues affecting millions of tenants have not been part of a holistic approach in formulating policy, law and strategy. Tenants find themselves in a hostile “market”: dwellings are scarce, existing stock of low and moderate income housing are being whittled away rapidly through conversion, rentals are at a premium, leases are offered on a “take-it-or-leave” basis, tenants are treated unfairly. In short, tenants are bound to a feudalistic policy.

This Discussion Document is the result of an on-going “dialogue” with the Ministry of Housing which started with the appointment of the late Mr Joe Slovo as the first Minister of Housing in our democratic South Africa. It is based on (i) grassroots work with tenants and (ii) contact with groups locally and abroad involved in tenants’ issues. We believe that this is an attempt that goes beyond protesting about the enormous problems faced by tenants. It looks at possible solutions by which the rights and obligations of both tenants and landlords can be guaranteed.

There is very little understanding about the plight of tenants and even less time, energy and resources available to address the critical need to overcome these

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<sup>1</sup> Grassroots Perspective of Tenants’ Rights in South Africa, 1994. Organisation of Civic Rights: Durban

problems. It is our contention that a comprehensive legislation is urgently needed (e.g. “The Tenant-Landlord Real Property Law”) to regulate the rights and obligations of tenants and landlords; that will be sensitive and will contribute to the delicate human rights fabric in our post apartheid era.

The Rent Control Act, 1976 with amendments should be incorporated into this new legislation-(*refer to paragraph” 9” below*). In addition to reforming rent control and rent boards and the rent control board- **local forums** are needed. These should operate at neighbourhood/municipal levels to resolve complaints of owners and tenants of dwellings (*refer to 9.7.4. below*). These forums will have to develop options for settlement and negotiate a final agreement, may use processes such as mediation, facilitation, arbitration, commissions of enquiry, fact-finding, conciliation.

Tenants are here to stay and many may prefer to rent rather than own dwellings. We do hope, therefore, that the Ministry of Housing will give the tenant-landlord area the priority it urgently deserves.

## 1. JUST CAUSE EVICTION VS ARBITRARY EVICTION

1.1 It is generally the practice for landlords to refuse to renew a lease or to terminate or evict without cause or reason. Landlords argue that it is their common law right to evict a tenant for a good reason or a bad reason or for no reason at all.

1.2 Our justice system seems to support this “oppressive right” of landlords against the tenant’s presumptive right of security of tenure. The exception to the rule is the Rent Control Act 1976. Sections 28, 29 and 30 of the said Act limit the landlord’s right to evict. The Act, however, applies only to a limited number of dwellings country-wide. Landlords have, however, devised ways of circumventing even the limitations stipulated in the Act. There is therefore an urgent need to prohibit landlords from exploiting tenants.

### **The following are some of the reasons for arbitrary evictions:-**

- Legitimate complaints** by tenants regarding the need for maintenance and repairs;
- Retaliatory or vindictive action** against tenants (for objecting to the landlord’s rent hike or for organising a tenants’ committee);
- Opportunistic reasons** - replacing families with students because the Educational Institutions concerned are willing to pay higher rentals than existing (sitting) tenants;
- Prospective new tenants** are willing to take occupation in spite of the state of disrepair and exorbitant rentals;
- Discriminatory reasons** - against pensioners, disabled persons.

Tenants are therefore forced out into a very hostile housing “market” and in the presence of growing homelessness.

## 1.2 POSSIBLE SOLUTIONS

### NEW LEGISLATION IS REQUIRED TO ENCOMPASS THE FOLLOWING: -

Tenants carry out-often diligently and painstakingly, their obligations to ensure security of tenure, expecting a stable and continuous home. It is crucial to curb the landlord's arbitrary behaviour to evict.

- 1.2.1 All persons must be entitled to full and equal accommodations, advantages, privileges and services, no matter what their gender, ethnicity, creed, religion or national origin.
- 1.2.2 Restrict the arbitrary behaviour of landlords.
- 1.2.3 Ensuring a **just cause** and **good faith** bases for eviction.
- 1.2.4 Landlords must be prohibited to terminate or fail to renew a lease for bad faith, such as vindictiveness, coerciveness, retaliation, opportunistic and exploitative reasons.
- 1.2.5 All written contract to lease must impose a duty of good faith and fair dealing on both parties.
- 1.2.6 The following are **just causes** to evict (by no means an exhaustive list):-
  - a) Failure to pay the rent when due;
  - b) The tenant habitually fails to pay the rent;
  - c) Failure to pay a rent increase, provided such an increase is not unconscionable and complies with any other relevant legislation (e.g., the Rent Control Act, local bylaws);
  - d) Disorderly conduct - disturbing the peace and quiet of other tenants or the neighbourhood;

- e) Damage to the premises resulting from wilful conduct or gross negligence;
- f) The accommodation is reasonably required for repairs and renovations, reconstruction or rebuilding scheme or demolition (Refer to sections 28, 29, 30 & 31 of the Rent Control Act, 1976).

## **2. ILLEGAL LOCKOUTS & SHUTTING OFF UTILITIES**

- 2.1 A lockout is the summary ejection of a tenant by the landlord without following legal procedures. This is a gross violation of tenants' rights and is clearly unlawful.
- 2.2 In general there is no provision in the South African criminal law making illegal lockout and shutting off utilities such as electricity and water, a punishable offence.
- 2.3 In terms of the Rent Control Act, certain specified conduct by the landlord, including summary eviction, may be punishable in law. [Refer sections 33 & 35 of the Rent Control Act, 1976.].
- 2.4 The only remedy available to a tenant is a civil remedy, in particular the spoliation order. A court will grant an order to have the utility switched-on or reconnected or the said premises restored to the tenant who was deprived of the use and enjoyment of the premises let to him or her.
- 2.5. Other remedies which a tenant would have in such an event are : the cancellation of the contract, an interdict restraining the landlord's conduct, claim for damages and for losses sustained as a result of illegal lockout or utility shut off.

2.6 However, the remedies available offer little comfort to tenants who have been evicted at a time when the courts are inaccessible for e.g. after hours and over weekends and the fact that a tenant will have to engage the services of an attorney and may not be able to afford the legal costs.

2.7 Landlords have also found ways to prevent the courts from granting urgent relief to tenants.

## **2.8 POSSIBLE SOLUTIONS**

2.8.1 A Harassment Clause specifically making it unlawful for any landlord or agent directly or indirectly to engage in any course of conduct, including, but not limited to, interruption or discontinuance of required services, or unwarranted or baseless court proceedings, which interferes with, or disturbs, or is intended to interfere with or disturb, the privacy, comfort, peace, or quiet enjoyment of the tenant in his or her occupancy of the rented accommodation.

2.8.2 Furthermore, to make illegal lockouts and shutting off utilities a criminal offence and the police empowered to re-instate an evicted tenant should the landlord fail to produce a valid court order for the ejection of the tenant or to have the utility switched off.

## **3. RENT INCREASES**

3.1 The principle of rent increases is entrenched in our law. The protection of tenants' rights is concerned with the issue of rent increases as mechanisms used by unscrupulous landlords to exploit and victimise tenants.

- 3.2 Rentals may be increased in terms of a prescribed stipulation in the Rent Control Act, or by the operation of lease or tenancy, written or verbal.
- 3.3 The right to housing needs to be extended to include the right to pay an **affordable rent**, particularly in the case of disadvantaged sectors such as the elderly, the disabled and the unemployed.
- 3.4 With the exception of a month's advance rental as a reasonable security deposit, a tenant should not be required to pay any additional amount or other premium such as goodwill or key money.
- 3.5 Rent increases should be carefully regulated in order to eliminate the exploitation of tenants by unscrupulous landlords.
- 3.6 Unfair rentals and unjustified rent increases, sub-standard conditions and other forms of exploitation should come under the scrutiny of rent boards and or special courts dealing with landlord-tenant matters, or an ombudsperson or local forum appointed at neighbourhood level to receive and process such complaints.

#### **4. THE ISSUE OF CONVERSION**

- 4.1. Existing legislation namely the Share Blocks Control Act No. 59 of 1980 and Sectional Titles' Act No. 95 of 1986, offer *some* protection to tenants. The relevant provisions may be summarised as follows:-

- 4.1.1 A landlord may not convert his premises to either sectional title or share block scheme unless he or she has complied with certain formalities, namely convene a meeting of tenants, provide information with regard to the scheme, and answer all reasonable questions.

- 4.1.2 The tenants must be informed that each of them has a right of pre-emption concerning the unit he/she occupies , namely, first choice to purchase the unit.
- 4.1.3 The landlord must offer to sell the unit to the tenant by making a formal offer in writing, stating his or her price.
- 4.1.4 Should the tenant not exercise his or her option within a period of 90 days, the landlord may offer the unit to someone else.
- 4.1.5 In the case of rent-controlled premises, the period of time that the tenant has to accept the offer is 365 days.
- 4.1.6 Where the tenant has refused the offer then the landlord may not for a period of 180 days thereafter sell the unit at a lower price than that offered to the tenant, unless he or she has offered it again to the tenant at the new lower price, in which case the tenant has another 60 days within which to accept.
- 4.1.7 Once the landlord has notified the tenants of his or her intention to convert, the tenant's right of occupation and the rental are fixed. The landlord may not, during this period, increase the rental or require the tenant to vacate the premises unless the latter fails to pay rent, inflicts material damage to the premises or becomes a nuisance.
- 4.1.8 Where the premises are rent controlled and the tenant is 65 years or older, the premises may only be sold to that tenant for as long as he or she continues to occupy it. This provision of course applies only if the tenant's income does not exceed the maximum laid down for tenants protected by Rent Control Act, (Act No. 80 of) 1976.

4.1.9 In the case of share blocks, this last protection is extended to the surviving spouse of a tenant who so qualifies.

4.1.10 If a sale is concluded contrary to any of the above provisions, then such sale is null and void and of no force and effect in law.

4.2 It is clear from the foregoing that the protection afforded to tenants in the case of conversion of the premises is very limited :-

4.2.1 The only category of tenant who has absolute protection is the person over 65 years of age whose monthly income does not exceed the maximum prescribed in the Rent Control Act.

4.2.2 The tenants who previously enjoyed the protection of the Rent Control Act and who are unable to purchase once the premises have been converted, will be compelled to vacate upon the expiry of the period of 365 days after receiving the offer to sell from the landlord.

4.2.3 The overwhelming majority of tenants, who at this point live in premises which are not subject to rent control, enjoy no security of tenure. The law requires them to vacate the premises upon the expiry of 90 days after the landlord has offered to sell the premises to them.

### **4.3 POSSIBLE SOLUTIONS**

Any recommendation with regard to the extension of greater protection to tenants who occupy premises which are the subject of conversion must be located within a broader framework for the protection of tenants' rights :-

4.3.1 Legislation may have to be enacted which entrenches a fundamental right of security of tenure, which is legislatively

qualified. The issues of conversion, demolition, renovation will have to be dealt with in relation to such a right.

4.3.2 A corollary to the foregoing must be the requirement that the landlord or where the local authority grants the necessary permission to the landlord or developer, provide alternative accommodation of an equivalent nature to the affected tenants.

4.3.3 A special court should be constituted to deal specifically with disputes between landlord and tenant, and other related matters.

## **5. WARRANT OF HABITABILITY**

5.1. In every written or oral lease or rental agreement for residential premises the landlord or lessor shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are :-

5.1.1 fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to life, health or safety.

5.1.2 when any such condition has been caused by the misconduct of the tenant or lessee or persons under his/her direction or control, it shall not constitute a breach of such covenants and warranties.

5.2 Any agreement by a lessee or tenant of a dwelling waiving or modifying his or her rights as set forth in this section shall be void as contrary to public policy.

5.3 In determining the amount of damages sustained by a tenant as a result of a breach of the warranty set forth in the section, the court need not require any expert testimony.

## **6. DISCRIMINATION**

6.1 Any person -landlord or his/her agent or any company or close corporation in charge of any accommodation used for dwelling purposes who refuses to rent the accommodation or part thereof to any person or family on discriminatory grounds, shall be guilty of a misdemeanour and on conviction shall be punished by a fine.

6.2 The following would constitute discriminatory grounds :-  
ethnicity (“race”), gender, religion, marital status, political affiliation, physical disability, nationality; family responsibility; (prohibition of children or single parent or parents prohibited from having children).

6.3 Relief granted to a person discriminated against shall include monetary compensation for damages or a penalty by a fine; injunctive relief, i.e. the offending landlord will be required by court to rent to the aggrieved party.

## **7. SECURITY DEPOSIT**

7.1 Security deposit is another aspect of landlord abuse and a source of constant annoyance for tenants. There is no law in our country that either requires or prohibits a landlord from collecting security deposit as a prerequisite to the tenancy. The landlord who has obvious superior bargaining power often requires two or three months advance rental as security deposit. This amount is usually non-refundable or part thereof is withheld on some pretext.

## **7.2 POSSIBLE SOLUTION**

- 7.2.1 Security deposit must be limited to the equivalent of one month's rental.
- 7.2.2 It must be held in an interest bearing bank account for those tenants who wish to avail themselves of the accrued interest at the prevailing rate of interest and the landlord shall credit such interest to the tenant's security deposit.
- 7.2.3 Such deposit shall not be mingled with other funds or become part of the landlord's asset.
- 7.2.4 The landlord shall notify the tenant in writing of the specific account and account number.
- 7.2.5 The deposit must be refundable as long as the tenant has complied with the lease conditions.
- 7.2.6 However, such deposit may be applied by landlord toward reimbursement for any reasonable cost of repair or cleaning necessitated by tenants' acts or omissions in violations of the Lease Agreement (normal wear and tear excluded) and for which is due, unpaid, and owing.
- 7.2.7 Within two weeks after tenant vacates the premises, landlord shall return to the tenant the security deposit, with accrued interest, less any deductions Landlord is entitled to make with regard to the above factors.
- 7.2.8 Landlord shall also give the tenant a written itemised statement of such deductions and explanations thereof.
- 7.2.9 Any waiver the tenant is obliged to make by a provision of a clause in the lease shall be deemed absolutely void.

## **8. LEASE AGREEMENT**

8.1 It is common practice for landlords and their agents to provide standard lease agreements overriding or ignoring the rights of tenants. Often, even reputable Agents do not allow tenants to study the lease or seek advice or legal opinion. Tenants are under tremendous pressure to accept the terms and conditions because of the sheer desperation for accommodation. Often, tenants do not receive a copy of the lease agreements they have signed and paid for.

8.2 It is our view that a Lease Agreement between a landlord and tenant must be in writing and in plain language. A tenant should have the right to a copy of the agreement (upon signing thereof). The cost of the agreement should be shared between the parties.

### **8.3 PROPOSED STANDARD LEASE AGREEMENT**

#### **8.3.1 PARTIES**

The parties to this agreement are

\_\_\_\_\_  
\_\_\_\_\_, hereinafter called "Landlord",  
and \_\_\_\_\_  
\_\_\_\_\_,  
hereinafter called "Tenant".

If Landlord is the agent of the owner of said property, the owner's name and address is

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8.3.2 PROPERTY**

Landlord hereby lets the following property to Tenant for the term of this Agreement: (a) the property located at:-

\_\_\_\_\_

and (b) the following furniture and appliances on said property:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8.3.3 TERM**

The term of this Agreement shall be for \_\_\_\_\_, beginning on \_\_\_\_\_ and ending on \_\_\_\_\_.

**8.3.4 RENT**

The monthly rental for said property shall be R\_\_\_\_\_ due and payable on the first day of each month to the Landlord at \_\_\_\_\_ for which the tenant shall be given a written rent receipt.

**8.3.5 UTILITIES/SERVICES**

Utilities/services shall be paid by the party indicated on the following chart:

	<b>Landlord</b>	<b>Tenant</b>
Electricity	_____	_____
Water	_____	_____
Refuse removal	_____	_____
Other	_____	_____

(Where the tenant is indicated as the responsible party, there shall be a separate utility meter for that unit.)

### **8.3.6 USE OF PROPERTY**

Tenant shall use the property only for residential purposes, except for incidental use in trade or business (such as telephone solicitation of sales orders or arts and crafts created for profit), so long as such incidental use does not violate local municipal laws or affects Landlord's ability to obtain fire or liability insurance.

### **8.3.7 TENANT'S DUTY TO MAINTAIN PREMISES**

Tenant shall keep the dwelling unit in a clean and sanitary condition and shall otherwise comply with all local municipal laws requiring tenants to maintain rented premises. If damage to the dwelling unit (other than normal wear and tear) is caused by acts or neglect of Tenant or others occupying the premises under his/her control, Tenant may repair such damage at his/her own expense. Upon Tenant's failure to make such repairs and after reasonable written notice by Landlord, Landlord may cause such repairs to be made and Tenant shall be liable to Landlord for any reasonable expense thereby incurred by Landlord.

### **8.3.8 ALTERATIONS**

No substantial alteration, addition, or improvement shall be made by Tenant in or to the dwelling unit without the prior consent of Landlord in writing. Such consent shall not be unreasonably withheld, but may be conditioned upon Tenant's agreeing to restore the dwelling unit to its prior condition upon moving out.

### **8.3.9 NOISE**

Tenant agrees not to allow on the premises any excessive noise or other activity which disturbs the peace and quiet of other tenants in the building or neighbourhood. Landlord agrees to prevent other tenants and other persons in the building or common areas or neighbourhood from similarly disturbing Tenants peace and quiet.

### **8.3.10 INSPECTION BY LANDLORD**

Landlord or his agent may enter the dwelling unit upon 7 days written notice and with Tenant's consent only for the following purposes: to make repairs, and to exhibit the unit to prospective purchasers, mortgages, and tenants. Such entries shall not be so frequent as to seriously disturb Tenant's peaceful enjoyment of the premises. Such entries shall take place only with the consent of Tenant, which shall not be unreasonably withheld.

### **8.3.11 SECURITY DEPOSIT**

a) Tenant shall pay Landlord, upon execution of this Agreement, a security deposit of R\_\_\_\_\_, which in any case does not exceed one month's rent. Said deposit may be applied by Landlord toward reimbursement for any reasonable cost of repair or cleaning necessitated by tenants' acts or omissions in violations of this Agreement (normal wear and tear excluded) and for which is due, unpaid, and owing.

b) Landlord shall place this security deposit in a bank savings-and-loan institution account bearing the prevailing rate of interest and shall credit such interest to the Tenant's security deposit. Within fourteen days of the date of this Agreement, Landlord shall notify tenant in writing of the location of such account and the account number.

c) Within two weeks after Tenant vacates the premises, Landlord shall return to Tenant the security deposit, with accrued interest, less any deductions Landlord is entitled to make under section (a) of this paragraph. If any

deductions are made, Landlord shall also give tenant a written itemised statement of such deductions and explanations thereof.

d) If the Landlord fails to comply with sections (a), (b), or (c) of this paragraph, then the Landlord waives the right to make deductions from the security deposit and will be responsible for returning the entire deposit to Tenant when Tenant vacates the premises.

**8.3.12 LANDLORD'S OBLIGATION TO REPAIR AND MAINTAIN PREMISES**

a) Landlord shall provide and maintain the building and grounds appurtenant to the dwelling unit in a decent, safe, and sanitary condition, and shall comply with all local laws, regulations, and ordinances concerning the condition of dwelling units which at a minimum must be maintained in decent, safe, and sanitary condition.

b) Landlord shall take reasonable measures to provide and maintain security on the premises and the building and grounds appurtenant thereto to protect tenant and other occupants and guest on the premises from burglary, robbery, and other crimes. Tenant agrees to use reasonable care in utilising such security measures.

c) As repairs are now needed to comply with this paragraph, Landlord specifically agrees to complete the following repairs on or before the following dates:

<b>Repair</b>	<b>Date</b>
_____	_____
_____	_____
_____	_____
_____	_____

This list is not intended to be exhaustive, nor is it to be constructed as a waiver as to any other defective conditions which may exist.

d) If landlord fails to substantially comply with any duty imposed by this paragraph, Tenant's duty to pay rent shall abate until such failure is remedied. Upon Landlord's failure to make necessary repairs, Tenant may make or cause to be made said repairs and deduct the reasonable cost of said repairs from the next months' rent. This section (d) shall apply to defects within Tenant's dwelling unit only, and then only if Tenant has notified Landlord or his agents of such defects and has given Landlord a reasonable time to make repairs. The remedies provided by this section (d) shall not be exclusive of any other remedies provided by law to Tenant for Landlord's violation of this Agreement.

### **8.3.13 SUBLEASING**

Tenant shall not assign this Agreement or sublet the dwelling unit without consent of Landlord. Such consent shall not be withheld without good reason relating to the prospective tenant's ability to comply with the provision of this agreement. This paragraph shall not prevent Tenant from accommodating guests for reasonable periods.

### **8.3.14 RETALIATION**

If Tenant reasonably and peacefully exercises any right granted under this Lease Agreement or any relevant law, or if Tenant joins or organises a tenants' union, Landlord agrees not to retaliate against or harass Tenant in any way, specifically including but not limited to eviction, rent increase or services decrease, refusal to renew a term tenancy, or substantial alteration of lease terms.

Landlord shall bear the burden of proving a good motive or good cause for any act which takes place within six (6) months of Tenants' exercise of a legal right pursuant to this Lease Agreement or any relevant law.

### **8.3.15 DESTRUCTION OF PREMISES**

If the premises become partially or totally destroyed during the term of this Agreement, either party may thereupon terminate this Agreement upon reasonable notice.

### **8.3.16 TENANT'S TERMINATION FOR GOOD CAUSE**

Upon 30 day's written notice, for good cause, Tenant may terminate this Agreement and vacate the premises. Said notice shall state good cause for termination. Good cause shall include, but not be limited to, entry into active duty with the military services, employment in another community, and loss of the main source of income used to pay the rent.

### **8.3.17 TERMINATION**

Upon termination of this Agreement, Tenant shall vacate the premises, remove all personal property belonging to him/her, and leave the premises as clean as he/she found them (normal wear and tear excepted).

### **8.3.18. LAWSUITS**

If either party commences a lawsuit against the other to enforce any provision of this Agreement, the successful party may be awarded reasonable attorney fees and court costs from the other. Landlord specifically waives any right to recover treble or other punitive damages.

### **8.3.19 NOTICES**

All notices provided by this Agreement shall be in writing and shall be given to the other party as follows:

To the Tenant: at the premises.

To the Landlord: at \_\_\_\_\_

### **8.3.20 HOLDOVERS**

If Tenant holds over upon termination of this Agreement and Landlord accepts Tenant's tender of the monthly rent provided by this Agreement, this

Agreement shall continue to be binding on the parties as a month-to-month agreement.

WHEREFORE, We, the undersigned, do hereby execute and agree to this Lease Agreement.

LANDLORD'S:

TENANT'S:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Date of Signature

## **9. TRANSFORMATION OF RENT BOARDS AND RENT CONTROL BOARD**

- 9.1 The Rent Board presently suffers from a very serious crisis of credibility, efficiency and legitimacy. Therefore the transformation of the board requires an intensive and intricate learning process on the part of all stakeholders. New personnel entering the Rent Board would have to be educated in a new spirit of a constructive and creative environment firmly committed to the idea and the demands of a non-racial South Africa.
- 9.2 At present the board still mirrors the structure and rationale of the past regime. A change in the complement of the personnel is inevitable since its members have been recruited to date exclusively from the previous ruling sector of the society-being predominantly male Afrikaners.
- 9.3. It is necessary to introduce measures like dismissal, exchange but also retaining qualified personnel i.e. personnel who have shown sensitivity to the requirements of adjudication in the new South Africa.
- 9.4. One would wish for constructive interaction to exist between the Rent Board and the Housing Ministry in the form of possibly a Consultative Council on state policy principles as an abridging institution to bring representatives of the board and society together on state policy principles.
- 9.5 In a democratic state it is of course of great importance to have an effective Rent Board. This means that persons must not only be competent and independent but also loyal to the principles of democracy. Reaching this goal demands that as many people as possible, regardless of ethnicity, gender, or social class should have the opportunity for inclusion. Another way to remind Board members of their role and duty in a democratic society is through a transparent system. This means that proceedings

should not be held behind closed doors without special cause. Members appointed to the Rent Board should also come from walks of life outside the legal world because they often have helpful and useful points of view.

9.6 Under normal organisations of statehood the Rent Board will strive so as to give itself the image of objectivity, impartiality and independence by keeping an equal distance to potential future litigants.

## **9.7 SOME SUGGESTED REFORMATION OF THE RENT CONTROL ACT / BOARDS**

9.7.1 The Rent Control Act, 1976 with amendments should be incorporated into a new legislation- “The Tenant-Landlord Real Property Law”. Present accommodation or dwellings subject to rent control should maintain this status. However, with the commencement of the new law, any tenant or landlord may approach the Local Forum (*refer to paragraph 9.7.4. of this discussion document*) with their grievances. The forum may refer the matter to the Rent Board in so far as rent dispute is concerned.

### **9.7.2 SPECIFIC AMENDMENTS:**

a) In terms of the present Rent control Act, the Rent Board presently enjoys a subjective discretion based on an “opinion” [e.g. section 8 (d)] on any matter. All decisions of the Board must be based on facts which are capable of objective scrutiny.

b) Section 13 (1) (a) omits to set out the factors which should be taken into account by the Board in determining a reasonable rental.

c) The same applies to section 14 (1) which gives no guidance to a Board on how it may satisfy itself whether an application is well founded or not.

d) Section 44 must be deleted.

e) In terms of section 11, the Rent Board may summon witnesses but this is totally at its subjective discretion. Tenants are not allowed to subpoena witnesses to prove their case.

### **9.7.3 APPEAL FROM BOARD.**

a) There must be an appeal procedure e.g. from Board to Control Board to Supreme Court.

b) If this is the procedure - the question of the Board providing meticulous records is important e.g. All proceedings must be recorded mechanically.

### **9.7.4 ESTABLISHMENT OF SPECIAL LOCAL FORUMS**

a) In order to resolve complaints of owners and tenants of dwellings, and to act upon hardship applications, a special “Local Forum” shall be established which shall consist of from four to nine members representative of the public, the real estate industry, residential tenants and a chairperson, all to be appointed by the mayor of the municipality and to serve such terms as he/she may designate.

b) The compensation of the members of the local forum shall be fixed by the mayor. The members of the local forum shall be considered employees of the municipality. The local forum shall have such office and staff as shall be necessary to carry out functions conferred upon it and may request and receive assistance from any state or municipal agency or department.

c) The local forum shall develop options for settlement and negotiate a final agreement, may use processes such as mediation, facilitation, arbitration, commissions of enquiry, fact-finding, conciliation.

d) It shall have the following duties:

- (i) to use an appropriate process to deal with any claim by a tenant or a landlord including claim for rent adjustment, and to refer the matter,

should there be no consensus, to the rent board for a rent determination or to a court of law to settle other disputes or to such court as may be established to deal speedily with tenant/landlord related matters;

(ii) enforcement of rules and regulations governing minimum housing maintenance standards;

e) The violation of any rule or regulation promulgated by the local forum shall be punishable by a civil penalty determined by the local forum not to exceed one thousand rands which may recovered by the municipality by a proceeding in any court of competent jurisdiction. The local forum may charge and collect reasonable fees in the execution of its responsibilities. The local forum may administer oaths, take affidavits, hear testimony, and take proof under oath at public or private hearings.

## **10. TENANTS' GROUPS**

10.1. Tenants shall have the right to form, join or participate in Tenants' Groups.

10.2. No landlord shall interfere with the right of a tenant to form, join or participate in the lawful activities of any group, committee or other organisation formed to protect the rights of tenants, nor shall any landlord harass, punish, penalise, diminish, or withhold any right, benefit or privilege of a tenant under his or her tenancy for exercising such right.

10.3. Tenants' groups, committees or other tenants' organisations shall have the right to meet in any location on the premises which is devoted to the common use of all tenants in a peaceful manner, at reasonable hours and without obstructing access to the premises or facilities. No landlord shall deny such right.

## **11. RETALIATION BY LANDLORD AGAINST TENANT**

11.1 No landlord shall serve a notice to quit upon any tenant or commence any action to recover real property or institute legal proceedings to recover possession of real property in retaliation or attempt to substantially alter the terms of the tenancy for :-

11.1.1 A good faith complaint, by or on behalf of the tenant, to a governmental authority of the landlord's alleged violation of any health or safety law, regulation, or ordinance, or any law or regulation which has as its objective the regulation of premises used for dwelling purposes; or

11.1.2 Action taken in good faith, by or on behalf of the tenant, to secure or enforce any right under the lease or rental agreement; or

11.1.3 The tenant's participation in the activities of a tenant's organisation.

11.1.4. The tenant in good faith commenced an action or proceeding in a court or administrative body to secure or enforce against the landlord or his/her agents any rights under the lease or rental agreement.

## **12. UNLAWFUL RESTRICTIONS ON OCCUPANCY**

12.1 As used in this section, the terms :-

(a) "Tenant" means a person occupying or entitled to occupy a residential dwelling who is either a party to the lease or rental agreement for such premises or is a statutory tenant in terms of the rent control law.

(b) "Occupant" means a person, other than a tenant or a member of a tenant's immediate family, occupying a dwelling with the consent of the tenant or tenants.

12.2 It shall be unlawful for a landlord to restrict occupancy of dwellings, by express lease terms or otherwise, to a tenant or tenants or to such tenants and immediate family. Any such restriction in a lease or rental agreement entered into or renewed before or after the effective date of this section shall be unenforceable as against public policy.

12.3 Any lease or rental agreement for dwellings entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupant, and dependent children of the occupant provided that the tenant or the tenant's spouse occupies the premises as his primary residence.

12.4 Any lease or rental agreement for dwellings entered into by two or more tenants shall be construed to permit occupancy by tenants, immediate family of tenants, occupants and dependent children of occupants, provided that the total number of tenants and occupants, excluding occupants dependent children does not exceed the number of tenants specified in the current lease or rental agreement, and that at least one tenant or a tenants' spouse occupies the dwelling as his primary residence.

- 12.5 The tenant shall inform the landlord of the name of any occupant within thirty days following the commencement of occupancy by such person or within thirty days following a request by the landlord.
- 12.6 No occupant nor occupant's dependent child shall, without express written permission of the landlord, acquire any right to continued occupancy in the event that the tenant vacates the dwelling or acquire any other rights of tenancy, provided that nothing in this section shall be construed to reduce or impair any right or remedy otherwise available to any person residing in any housing accommodation on the effective date of this section which accrued prior to such date.
- 12.7 Any provision of a lease or rental agreement purporting to waive a provision of this section is null and void.
- 12.8 Nothing in this section shall be construed as invalidating or impairing the operation of, or the right of a landlord to restrict occupancy in order to comply with national or provincial or local municipal laws, regulations or ordinances.
- 12.9 Any person aggrieved by a violation of this section may maintain an action in any court of competent jurisdiction for:
- (a) an injunction to enjoin and restrain such unlawful practice,
  - (b) actual damages sustained as a result of such unlawful practice, and
  - (c) court costs.

## **THE WAY FORWARD**

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The ARUSHA Declaration 1990 (African Charter for Popular participation in Development and Transformation) recognises “the role of peoples participation in Africa’s recovery and development effort”, it claims community empowerment and self development through independent peoples organisations at various levels and a consultative machinery on various aspects of democratic participation. South Africa would according to this declaration have to yield space to the people it speaks of in this respect of a new partnership between the Government and the people.

Existing legislation regarding the position of tenants clearly engenders hardships, contains lacunae and conflicts with the vision envisaged by the Constitution. The solution lies not in tinkering with the various laws which govern the position between landlord and tenant, but in replacing it with new legislation which must address both immediate needs as well as policy considerations relating to this area of the law.

Sayed-Iqbal Mohamed

Chairperson, Organisation of Civic Rights  
in the service for better and just living condition

September 18, 1996  
Ref.09176-tr/sim

MRS SANKIE D MTHEMBI-MAHANYELE, MP  
Minister of Housing  
Private Bag X9029  
CAPE TOWN  
8000

**For Attention : Jonellda Pienaar  
Administrative Secretary**

Respected Comrade, Mrs Mthemb-Mahanyele  
Greetings!

DEVELOPING TENANTS' RIGHTS LEGISLATION

Attached herewith, OCR's discussion document on the rights and obligations of tenants and landlords.

We look forward to your response and eagerly wait to meet with you.

Kind regards  
Sayed-Iqbal Mohamed

Chairperson  
in the service for better and just living condition  
c.c. Mr. Yusuf Bhamjee, MPP, KwaZulu Natal / Head-Department of Housing  
Mr. Pravin Gordhan, MP, Durban Central Parliamentary Constituency Office

Natural Task Team"  
24 NOV 1998.

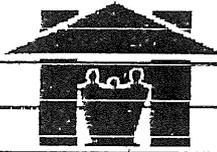
## AGENDA

**MEETING WITH RELEVANT ORGANISATIONS ON THE DRAFT HOUSING RENTAL BILL ON 24 NOVEMBER 1998 AT 10:00 IN ROOM 227, 240 WALKER STREET, SUNNYSIDE, PRETORIA.**

1. WELCOME
2. APOLOGIES
3. ATTENDANCE
4. CONFIRMATION OF THE AGENDA
5. PURPOSE OF THE MEETING
6. COMMENTS OF ORGANISATIONS
  - 6.1 ORGANISATION OF CIVIC RIGHTS (OCR) ✓
  - 6.2 ASSOCIATION OF SOCIAL HOUSING ORGANISATION
  - 6.3 CENTRAL JOHANNESBURG PARTNERSHIP
  - 6.4 URBAN SECTOR NETWORK
  - 6.5 SAPOA
  - 6.6 GAUTENG PROVINCIAL ADMINISTRATION (DEPT OF HOUSING AND LAND AFFAIRS) ✓
  - 6.7 BANKING COUNCIL OF SOUTH AFRICA ✓
  - 6.8 GREATER JOHANNESBURG METROPOLITAN COUNCIL ✓
  - 6.9 SOCIAL HOUSING FOUNDATION ✓
  - 6.10 ICHUT
7. DISCUSSION
8. FUTURE PROCESS
9. ADDITIONS TO THE AGENDA
  - 9.1
  - 9.2
  - 9.3
10. CLOSURE

DEPARTMENT OF HOUSING

KGORO YA MENGWAKO



UMNYANGO WEZEZINDLU

DEPARTEMENT VAN BEHUISING

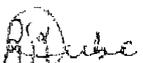
(012) 421 1311 X644 Pretoria 0001 (021) 461 5840 FAX (021) 45 3802 X9057 Cape Town 8000

## FAX TRANSMISSION

TO	Mr Sayed-Iqbel Mohamed	DATE: 18/11/98
FAX NO	031 301-0026	
FROM	Thembi -DG's Sec Tel (012)-4211486	PAGES 1
SUBJECT	DRAFT HOUSING RENTAL BILL	

### COMMENTS EXTREMELY URGENT

Our telecon Tues 17/11/98 refers.
The meeting re: above mentioned subject will take place on Tuesday 24 1998.
Venue :Dept of Housing 240 Walker Street Sunnyside, Pretoria
Room 227 (2nd Floor)
Time : 10h00 to 12h00.
Parking arranged.
Thank you for making yourself available for this meeting.

*PP*  
  
 DIRECTOR-GENERAL  
 MPUMI NXUMALO-NHLAPO

fax/housing/rental/BJDC/sec/24/98

HOUSING THE NATION



Reference: NB 7/6/2/20  
Enquiries: J Wallis  
Telephone: (012) 421-1440

Mr S I Mohamed  
Chairperson: OCR  
P O Box 4787  
**DURBAN**  
4000

Dear Mr Mohamed

### TENANT'S RIGHTS

Thank you for your letter dated 2 May 1997 which was addressed to Mr W J Cobbett who requested me to respond to your letter.

The Department has been in discussion with the Minister of Housing for some time now about the issue of tenant's rights and we are considering the establishment of a Steering Committee to guide further investigations and discussion around this topic. Once approval is obtained concerning the establishment of such a Steering Committee, I will contact you again to keep you abreast of the thinking of representation on such a steering committee.

With regard to paragraph 3 of your letter, it would seem as if a letter which Mr Cobbett addressed to you on 12 December 1996 never reached you and I therefore include a copy thereof for your information.

Kind regards

*J Wallis*

DIRECTOR-GENERAL

DATE: 97.05.23

Evening Post Tuesday July 13 1999

# Focus on flat dwellers' rights

**BY MAWANDE JACK  
Municipal Reporter**

THE rights of flat dwellers in Port Elizabeth came under the spotlight at a workshop organised by the Organisation of Civic Rights (OCR) at the Consumer Affairs premises.

Durban-based OCR chairperson Sayed-Iqbal Mohamed spoke about the widespread violation of tenants' rights by landlords.

Increasing rents,

poor living conditions, low maintenance of flats, lighting and leakage were listed as the major problems facing flat dwellers in PE.

Mohamed said the situation was compounded by the ignorance of tenants of their rights and the absence of tenants' organisations to defend these rights.

"Tenants are just like other consumers - entitled to specific rights which are pro-

tected by law," he said.

In Durban the formation of tenants organisations had, through its campaigns against flat-owners, increased the awareness of tenants about their rights and the available legal processes for the enforcement of these rights.

He said the challenge for PE tenants was to form these organisations to bring their exploitation by landlords to an end.

# Housing minister in Durban today

TENANTS rights and the plight of Durban's thousands of homeless comes under the spotlight today when housing minister, Sankie Mthembu-Mahanyele visits the city.

Veteran tenants rights activist, Sayed-Iqbal Mohamed said he had been trying for years to get the minister to visit the city. His Organisation of Civic Rights will urge the minister to introduce national legislation to provide stronger protection against unscrupulous landlords.

The organisation also wants provision for landlords-tenants courts to adjudicate on housing disputes. - Daily News Reporter

## Housing minister wins hearts in Durban

THAMI NGIDI

**H**ousing Minister Sankie Mthembu-Mahanyele's diplomacy and deep "understanding of issues" relating to the plight of the homeless won the hearts of the militant Organisation of Civil Rights on Friday.

Mahanyele met the OCR at the Diakonia offices in Durban on Friday as part of a fact-finding

mission in KwaZulu-Natal.

An OCR spokesman, Iqbal Sayed Mohamed, said the meeting had been the "most fruitful" his organisation had attended with government officials.

"The minister has her finger on the pulse. She knows exactly where her department is going, and I will withdraw my comments about the inefficiency of government just because of her."

He said his organisation had

told the minister there was a need for a clear policy on rent control and tenancy in the province.

He said his organisation also expressed its unhappiness at the lack of vision and the implementation of a clear policy on housing.

The OCR represents at least 8 000 homeless people in Durban. Said Mohamed: "Council operates on an ad hoc basis, and there exists a need for a clear cut policy on rent and housing".

DAILY NEWS, TUESDAY, OCTOBER 28, 1997

## New bill of rights will protect tenants

FAROOK KHAN  
DAILY NEWS REPORTER

THE Government is working on a bill of rights for tenants.

This emerged from a meeting between Housing Minister Sankie Mthembu Mahanyele and the Organisation of Civic Rights at Durban's Ukuthula Ecumenical Centre.

Director of the organisation

Sayed Iqbal Mohamed said he and his officials were pleasantly surprised at the Government's commitment.

"Draft legislation regulating landlord-tenant relationships will be available next year. Our input has been included and we will be consulted for further comments and suggestions," he said.

He said his organisation had been fighting for years for a bill of

rights for tenants. "We also mentioned the need to abolish rent control and introduce a system that would be just and equitable to both landlords and tenants.

"Both sides exchanged documents and agreed to keep in close contact on matters affecting tenants," said Mr Mohamed.

The minister had agreed to investigate the plight of the homeless in Durban.

DAILY NEWS, TUESDAY, MAY 26, 1998

## Landlord-tenant law review

DAILY NEWS CORRESPONDENT

CAPE TOWN: Housing Minister Sankie Mthembu-Mahanyele has announced a reform of legislation on housing rental.

The new legislation, which will govern the relationship between tenants and landlords, rent control, assured tenancies and other issues, will be put to the Cabinet for approval soon.

Ms Mthembu-Mahanyele was speaking during her policy review debate in the National Council of Provinces. She also announced there had been substantial rewrites of the National Home Builders and Registration Council Bill and Consumer Protection Measures Bill after in-depth consultation with stakeholders in the home building

industry.

The legislation would be put to the National Assembly shortly.

It would promote consumer protection against unscrupulous home builders to all new home owners, irrespective of race, gender or income level, she said.

Within the next six months, the South African Housing Development Board provided for in the Housing Act would be appointed, to advise on development and implementation of national housing policy.

Minimum standards for permanent residential structures would have to be strictly enforced by developers using the Government's capital subsidy. She said a total of R7,3 billion had been spent on housing since 1994.

# Ruthless landlords will be reined in

BY PADDY HARPER

**M**ore than 8,8 million South African tenants will be legally protected against exploitation by unscrupulous landlords for the first time on Tuesday August 1 when new legislation governing the relationship between landlords and their tenants comes into effect.

The Rental Housing Act – which was gazetted yesterday – will have a positive impact in improving the decaying state of buildings and the redevelopment of urban areas, according to Organisation of Civic Rights chairman Sayed Iqbal Mohamed.

The act creates mechanisms to regulate the rental housing market. It provides for conflict resolution, sound relations between tenants and landlords, and the creation of rental housing tribunals.

It also effectively repeals the Rent Control Act and lays down general requirements relating to leases between landlords and tenants.

The act will deal with issues

including overcrowding and the security deposits currently required by landlords; arbitrary evictions and exorbitant rentals; the invasion of privacy by landlords; discrimination; and poor living conditions and illegal lockouts by landlords.

The act also allows for the tenants' committees to be recognised and allows both tenants and landlords to bring grievances before provincial rental housing tribunals, which have legal standing equal to a magistrate's court.

## Receipts required

Landlords will now be required to issue receipts for deposits and rentals, and will have to invest the deposit in an interest-bearing account and refund it – minus reasonable costs of repairs – to the tenant.

At the same time, landlords will be able to take action at tribunal level against tenants to deal with problems of overcrowding and tenants' refusal to pay.

"For the first time in South African history, the feudalistic relationship between landlord and tenant

will come to an end," Mohamed says. "For the first time, tenants' rights are recognised by law." Mohamed believes the repeal of the Rent Control Act will not be a blow to poor tenants because of the low number of dwellings falling under rent control.

He estimates that less than 30 000 people live in rent-controlled premises, and adds that the new legislation allows for a three-year cooling-off period in which owners can raise rentals by only 10% annually for the first three years.

Landlords would also benefit from the repeal, as in the past they battled to evict non-paying tenants in rent-controlled flats because of the Rent Control Act.

KwaZulu Natal Housing MEC Dumisani Makhaye has confirmed that the process of implementing the new act will begin in the near future.

Officials from his department have already started advertising for members for the province's rental housing tribunal and will begin a public education process around the act soon.

## Post

AUGUST 2-5 2000

# New Act becomes law

## POST REPORTER

THE Rental Housing Act No 50 of 1999 which became law in the country yesterday will apply to all nine provinces.

The new Act provides for conflicts between tenants and landlords to be resolved via the Rental Housing Tribunals.

The Ministers of Housing in the various provinces have been authorised by Government to set up tribunals to hear disputes between ten-

ants and landlords. In terms of the new Act, landlords who do not issue receipts for deposits and rentals, will be violating the law.

For the first time landlords have a recourse to deal with overcrowding and recalcitrant tenants.

Tenants and landlords now for the first time have comprehensive laws governing their relationships.

The new Act means that landlords and tenants will have to abide by the law and if either party flouts the law, the Rental Housing Tribunals will have to intervene to ascertain who is at fault.

In the next issue Post will publish

the role played by the Organisation for Civic Rights in the drafting of the Rental Housing Act No 50 of 1999.

The organisation's chairman, Mr Sayed Iqbal Mohamed, who is also a Durban Metro councillor, said that his body was the only organisation which sat on the task team to advise the National Housing Minister about the new Act.

According to the OCR more than 8,6 million South Africans live in rented accommodation.

More about this and other aspects of the new law in your favourite newspaper next week.

# New Act protects tenants

By **PADDY HARPER**  
Chief Reporter

MORE than 8,8-million South African tenants will be legally protected against exploitation by unscrupulous landlords for the first time when new legislation governing the relationship between landlords and their tenants comes into effect on Tuesday.

The Rental Housing Act – gazetted yesterday – will have a positive impact on improving the decaying state of buildings and the redevelopment of urban areas, according to Organisation of Civic Rights Chairman Sayed Iqbal Mohamed.

The Act creates mechanisms to regulate the rental housing market.

It provides for conflict resolution,

relations between tenants and landlords and rental housing tribunals.

It also effectively repeals the Rent Control Act and lays down general requirements relating to leases between landlords and tenants.

The Act deals with issues like overcrowding and security deposits presently required by landlords; arbitrary evictions and exorbitant rentals; the invasion of privacy by landlords; discrimination and poor living conditions and illegal lock-outs by landlords.

The Act also allows for the tenants' committees to be recognised and allows tenants and landlords to bring grievances before provincial Rental Housing Tribunals.

Landlords will now be required to issue receipts for deposits and

rentals and will have to invest the deposit in an interest-bearing account and refund it – minus reasonable costs of repairs – to the tenant. At the same time, landlords will be able to take action at tribunal level against tenants to deal with problems of overcrowding and refusal by tenants to pay.

“For the first time in South African history, the feudalistic relationship between landlord and tenant will come to an end,” Mohamed said. “For the first time tenants' rights are recognised by law.”

He believes the repeal of the Rent Control Act will not be a blow to poor tenants because of the insignificant number of dwellings falling under rent control.

**SEE EDITORIAL, PAGE 8**

## Win, win for tenants, landlords

**A**NY tenant who has ever been at the mercy of an unscrupulous landlord will welcome legislation which comes into effect next week. In a nutshell, the Rental Housing Act, which becomes law on Tuesday, will effectively stop the exploitation of tenants.

Landlords need not fear, however, that the Act is a one-way street – it will also protect them from “tenants from hell”, those who damage their property or who continuously refuse to pay up. In effect, the Act should have a positive spin-off for both parties as for the first time in South Africa it creates effective mechanisms to regulate the rental housing market.

Perhaps the most positive feature of the Act is that it allows for tenants' committees to be recognised and allows both tenants and landlords to bring grievances before a provincial Rental Housing Tribunal which will have legal standing equal to a Magistrate's Court. Not only does this streamline the legal process for both tenant and landowner, but it should also make the process cheaper and more accessible, while taking an unnecessary burden off the already overcrowded Magistrate's Courts around the country.

By making the law now recognise the rights of tenants as well as landlords, the Government is admitting that until it can provide the number of affordable houses it has promised, it can at least protect those people who cannot afford to buy their own homes. These are the people who, until now, have often had to live in decaying buildings because it's all they could afford or all that was available to them. Landlords were more often than not happily gathering their rentals without making any effort to upgrade their living conditions. The law in this regard, it seems, will be much fairer to both parties.

Meanwhile, it has been a tense week for many people who do own their own homes in Durban, as Monday's deadline for sales in execution for rates defaulters loomed. North Central and South Central Local Councils quite rightly got tough last week and threatened to auction the properties of more than 200 rates defaulters. While we understand the huge financial burden many people are carrying, we do strongly urge that they find a way to pay their rates.

Without this money, our city's coffers will be radically depleted and we will all ultimately suffer from a lowering of services.