

Rulings of The Rental Housing Tribunals

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Introduction

The provincial Rental Housing Tribunals ("the Tribunals") were established in terms of the Rental Housing Act, [50 of 1999](#) ("the Act"), to resolve unfair practice disputes between parties to a residential lease. The Tribunals are tasked to make findings in a myriad of matters in the sphere of residential leases. In this article, the rulings of the provincial Tribunals, what these entail or ought to, the implications for parties and how the outcome differs from an arbitrator's decision and that of a magistrate's judgment, are highlighted.

A dispute is usually mediated¹ or, failing mediation, it will be heard before at least three members or commissioners. A hearing proceeds in a similar manner to proceedings before a court and concludes with a ruling, which is deemed to be a judgment of a magistrate's court, but without the right of appeal. The Tribunal in a sense is vested with "exclusive jurisdiction" regarding unfair practice disputes.

Section 13(9) of the Act is the empowering provision:-

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.

Section 13(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.

Section 13(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.

In *Maphango v Aengus Lifestyle Properties* [2012 \(5\) BCLR 449](#) (CC), the Constitutional Court confirmed the unfair practice regime of the Tribunals as being their "exclusive domain". Courts, it would seem, are precluded from adjudicating unfair practice disputes arising from residential leases.

Unlike arbitration, the Tribunals follow an adjudication procedure and can make specific orders including the granting of an interdict, spoliation and a final ruling. Once subpoenaed, a party has no choice but to attend a hearing, failing which they may be found guilty of an offence carrying the penalty of a fine, imprisonment or both.

Given that the Tribunals are entrusted with the authority to terminate an unfair practice to the exclusion of the courts and that their rulings enjoy equal status to that of a magistrate's court judgment, but without the right to appeal, great care must be invested in crafting their rulings.

Ruling

Parties to a Tribunal hearing present their evidence under oath or affirmation, may call witnesses and hand in documents (exhibits) in support of their case. In some instances, an inspection report of the Tribunal's inspector will also form part of the proceedings. Tribunal members are impartial even though they are entitled to question the parties in an environment that combines the

accusatorial and inquisitorial approaches.

The Tribunal's finding is presented in the form of a written ruling or judgment which indicates the end of the case. To arrive at the judgment, members have to deliberate on the evidence presented by the parties which entails the gathering and interrogating of the evidence and analysis thereof.

A member is likely to write the ruling with at least two other members concurring, although some Tribunals have five members presiding over a case. It is also possible for a member to dissent from the ruling of the majority of the Tribunal and may provide her or his reasons separately. Once a ruling is made, the Tribunal's hold on the case is relinquished and members are said to be *functus officio* and the doctrine of *res judicata* applies.

A Tribunal's ruling should reflect the three attributes of a judgment or order identified by Mpati JA², "A 'judgment or order' is a decision which, as a general principle, has three attributes, first, the decision must be final in effect and not susceptible of alteration by the Court of first instance; second, it must be definitive of the rights of the parties; and , third, it must have the effect of disposing of at least a substantial portion of the relief claimed in the main proceedings."

What of the format of the ruling? A good ruling will adopt a logical and coherent outline with a brief background, usually comprising a synopsis of the undisputed facts. This is followed by a summary of the the evidence of the complainant and the respondent and an analysis of the evidence, the application of the Act and other relevant legal principles to the facts and evidence, the conclusion and the order or ruling.

The challenge is to move beyond simply relying on the Act and to identify and include references to case law and other applicable legislation in a given case. The Act is the law of general application, having modified some aspects of the common law and law of contract. The Act did not codify landowner-tenant laws that are rooted in the common law and developed in the law of contract, other legislation and decided cases. It has changed some aspects of the common law and restricted the application of some areas of the law of contract.

The Tribunal may have to consider several pieces of legislation in a given dispute. Where, for example, a tenant is a member of the South African police services, occupying a property administered by the department of public works (the landlord), the Promotion of Administrative Justice Act, [3 of 2000](#) ("PAJA") is one of the Acts the Tribunal will have to take adequate note of. PAJA is part of administrative law that affects all tiers of government in the performance of its administrative functions. Adequate notice of the nature and purpose of the proposed administrative action must be given to an affected tenant terminating a lease³.

Tribunals can issue spoliation orders and interdicts when a tenant is denied access to a property or utility services are switched off. A landlord could unlawfully dispossess a tenant by removing the front door or decommissioning a tenant's access card to the property. Here, reference to case law is critical in arriving at a decision. A landlord/respondent cannot be ordered to reinstate a tenant who was unlawfully displaced if the property was subsequently occupied by another tenant. Judge Hughes-Madondo⁴ set aside the decision of the KwaZulu-Natal Rental Housing Tribunal and directed it to conduct a new hearing because its entire hearing was procedurally unfair where the Tribunal had insisted that the tenant' possession be restored when it was impossible to do so as the property was already let to a new tenant.

Municipal tenants may lodge a complaint with the Tribunal that a municipality's "debt write-off policy" for the indigent has not been implemented equitably⁵. In such a case the Tribunal must first establish whether it has jurisdiction, if it does, then it must consider the municipality's policy together with the lease agreement between the parties. It may also defer the finalisation of its proceedings by referring the matter to national government or the Equality Court in terms of section 13(4)(b) of the Act⁶.

In a dispute, where both the respondent and the complainant's evidence under oath confirm that they gained access to the meter room to disconnect and reconnect the electricity supply to the property. The Tribunal is obliged to refer this possible transgression of the by-law to the municipality⁷.

A party aggrieved by the Tribunal's process and proceedings is entitled to take the decision on review to the high court, however caution must be exercised where this option is taken as where the ruling shows that both sides were heard, without favour or bias the prospects of a successful review are slim. Proceedings that started with the counter claim, with the complainant as the respondent, may not prejudice the parties if the ruling records their evidence and terminates the unfair practices, justly and fairly⁸.

While the Tribunal must resolve unfair practice disputes, it does not have discretionary powers or inherent jurisdiction. There are situations when it is argued that the common law or any other relevant law, including the Act, can be 'compromised' to bring about a solution. This erroneous reasoning is based on the 'need to find a solution in a practicable and equitable manner' and 'to harmonise relationships'.

In the words of Flemming DJP, "Legality must not be considered out of context with desirability."⁹ Members of the Tribunals have a great task to draft rulings which are "just and fair to terminate

any unfair practice"¹⁰. They need to be meticulous and responsive to the many challenges as they dispense justice.

Footnotes

- 1 13(2)(d) where the Tribunal is of the view that the dispute is of such a nature that it cannot be resolved through mediation or where a mediator contemplated in paragraph (c) has issued a certificate to the effect that the parties are unable to resolve the dispute through mediation, conduct a hearing and, subject to this section, make such a ruling as it may consider just and fair in the circumstances.
- 2 *Steenkamp v South African Broadcasting Corporation* [2002] 2 All SA 180 (A) at paragraph [13].
- 3 *The Minister of Safety & Security v Moodley* [2011] 4 All SA 47 (SCA).
- 4 *Ethekwini Municipality v Kwazulu-Natal Rental Housing Tribunal and others* [2010] ZAKZDHC 61.
- 5 *Sol Plaatje Local Municipality v Hartzenber, Kruger & Gouws*, Case Nos. 261, 262 & 263/06/2015/NCF, Northern Cape Rental Housing Tribunal.
- 6 "where it would appear that the provisions of any law have been or are being contravened, refer such matter for an investigation to the relevant competent body or local authority."
- 7 *Augustine v Diab* Case Nos. 666 & 756/18/19 KwaZulu Natal Rental Housing Tribunal.
- 8 *Amar Educational Fund v Liaqat Khan*, case no: RTC 036/17, Gauteng Rental Housing Tribunal.
- 9 *Joubert and others v Van Rensburg and others* [2001 \(1\) SA 753](#) (W).
- 10 Section 13(4)(c) of the Act.