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BODY CORPORATE OVERRULED

# New rules for tenant screening

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**A** DURBAN court has ordered the body corporate of a Durban block of flats to compensate a flat owner for lost rental after it deemed a prospective tenant "shady and unacceptable" and refused to allow the family to move in.

The decision this week, although only made by the Small Claims Court, has been described as "ground breaking" in South Africa, and one that will force bodies corporate to review their "screening" rules to ensure they are not contrary to the constitution.

Sagaran Govender, and his wife Therusha, sued the body corporate of Harbour View flats for the R3 000 rental they lost out on in March 2005 after the then chairman of the body corporate, Piet van Oudshoorn, refused to allow a tenant to occupy a flat they own in the building.

The Govenders own and live in another flat in the building.

At the time Govender advertised the flat, he decided to rent it to a woman with two grown-up children. The family went for "screening" in accordance with the rules of the body corporate.

He was never informed of the outcome of the interview and only realised that the family had been "turned down" when he started receiving calls from other prospective tenants.

He then wrote to the body corporate, complaining about Van Oudshoorn's actions and asking for compensation of one month's rent.

According to the minutes of a trustees meeting held in January 2006, at which the issue was discussed, Van Oudshoorn had found the ten-

ant to be "totally unacceptable and shady" with fraudulent references.

Efficient screening, he said, was the only way that the standards of the building could be upheld.

The body corporate denied liability, saying its rules applied to all and it had the discretion to decide if a tenant was in the best interests of the building.

Govender, on the advice of Sayed-Iqbal Mohamed, Chairman of the Organisation of Civic Rights, took the matter to court and argued that, in terms of the constitution, people had a right to adequate housing.

## Ripple effect

He said bodies corporate had no right to screen tenants because a tenant's relationship was with the owner or landlord of a unit, not with the body corporate.

In law, he said, a tenant could not be denied occupation. Only if a tenant broke the house rules could a body corporate seek eviction.

The court agreed with Govender and awarded the damages claim. Commenting on the decision, Mohamed said it would have a "ripple effect" throughout the country.

"I understand the need for some measure of control. But one has to balance that against the rights of the owners.

"These rights are being violated - perhaps with good intentions - by bodies corporate who take it upon themselves to make rules, change rules and then impose them on everyone else.

"This is indicative that their powers are limited - and no rules can override law and the constitution."