

CHATELS, CHAPTER AND VERSE

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Durban's Organisation of Civic Rights (OCR), which incorporates the Durban Central Residents' Association, deals with an area in which millions of consumers suffer abuses, and which few organisations - least of all the government - have looked at. This area is tenants' rights.

Up to nine million South Africans can be described as tenants, ranging from those who rent backyard shacks to those renting plush penthouses in leafy suburbs. They all have rights, are all subject to the vagaries of their landlord and the majority are liable to have their rights abused at some point. Those who are most vulnerable - the poor, ignorant, aged, etc - are most open to exploitation.

In years gone by, exploitative landlords have caused tenants to form groups to defend themselves. Some court actions have led to legal precedents which tenants have been able to cling to, like not victimising people who complain.

The trouble has always been - and continues to be - that as a rule landlords exploit those who can be exploited. And for those who do know where they are being wronged, remedies are expensive and hard to come by.

The chairman of the OCR, Sayed-Iqbal Mohamed, is no stranger to these issues. He began his activities in this area after suffering a Group Areas Act removal about a decade ago. His experience in working with tenancy rights is especially valuable because it is independent, and because the OCR is one of very few organisations gathering information and lobbying for changes to protect tenants' rights.

The OCR is the only organisation in Durban offering aggrieved tenants advice and help. It aims to spread its wings in the near future throughout the country.

Mohamed's latest attempt at lobbying for change hit rocky ground: despite indications that the Housing Ministry would incorporate tenants' rights into its White Paper, this so far has not happened.

The OCR recently published the Handbook on Tenant's Rights, which very simply and effectively sums up the legal position of both landlords and tenants. It costs R6 and is the type of booklet which will prove useful even to those tenants who regard themselves as educated, well off and able to fight their own battles.

Mohamed has also put some of his research together in a document entitled A Grassroots Perspective of Tenants' Rights in South Africa. This contains a history, background and analysis of the situation, as well as some suggestions on how it could be put right.

After a detailed analysis of the statistics of housing and its lacks, he arrives at the conclusion that "tenants ... form a crucial part (of the housing scene) but without recognition of their rights and solutions to problems related to their tenancy.

"Housing / tenant laws and policies have therefore resulted from the tension caused by unscrupulous landlords and the private sector who exploit the housing crisis. Human beings are conceptualised as mere chattels and it is out of necessity that some form of 'protection' be given. This would ... prevent unwarranted rent increases, arbitrary and retaliatory evictions and excessive rentals."

No doubt some of the ideology underlying the document will irritate estate agents and landlords, but its views would summarise the feelings of most tenants. And it's worth remembering that those tenants, be there two million or 10-million of them, have votes.

Mohamed defines the country's tenant-landlord law as feudal. He notes that protection measures such as the rent control laws are viewed as "interfering with the landlords' common law rights".

Common abuses include overcharging, taking "key money" - an illegal way of securing premises by paying a cash amount - arbitrary evictions, lockouts.

Mohamed calls for a restructuring of tenants' rights, adding that this should include the participation of the ministries of Housing and Justice. He would like to see a way of resolving disputes through the use of a landlord-tenant court.

His proposals include:

- The reconstitution of all rent boards, which should be selected with "transparency" and rid of racial bias.
- Establishing an ombudsman to investigate tenants' complaints.
- A moratorium on exemptions of dwellings from rent control.
- A moratorium on evictions that result from proposed demolitions, conversions, sectional title developments, etc.
- A reassessment of rent control as a means of solving some of the problems. He notes that rent control can be imposed by the president or minister of housing in terms of existing law.
- Legislation to protect tenants from racial discrimination. This should be catered for as part of the constitution.
- The legal recognition of properly constituted tenants' committees. Many tenants' committees are ignored because they do not have any standing in law.

This Critical Consumer believes that shelter is a basic human right, like health, education, nourishment, etc. It should follow that mechanisms be put in place which ensure that if each South African cannot own his own home, tenancy is protected from unscrupulous exploitation.