

'House rules' being used to bypass law

Insistence on compliance with 'voluntary' measures

Dr Sayed Iqbal Mohamed

THE task of balancing the interests of diverse groups in a sectional titles scheme is a difficult one; often daunting. The body corporate, trustees, owners, tenants, landlords, supervisor, managing agent, security personnel and visitors, are interconnected.

The sectional titles scheme provides a communal environment, intersecting the divergent legal rights and duties that need to be respected, observed and discharged.

The owners' obligations to conduct rules are carried over to their tenants. It is common practice to have house rules but these ought to be a summary of the conduct rules since there is no basis for house rules in the Sectional Titles Act.

Conduct rules govern the relationship of all the residents and parties in a sectional title scheme as a statutory guideline for the control, administration and management of the common areas. It is enforceable with certain penalties, if so amended and lodged with the deeds office in the province.

Regrettably, in an endeavour to get the scheme or building to function according to a certain 'standard', house rules are often used by persons as a weapon to abuse owners and tenants.

Some have adopted a sophisticated approach in circumventing the 'screening' or interviewing of an owner's tenant and limiting the number of occupants.

These "rules" violate an owner's constitutional rights and other laws. It is therefore not surprising that there is a harsh warning from the Chief Registrar of Deeds in this regard.

Some years ago, we referred an aggrieved owner to the Small Claims' court who successfully recovered his rentals as damages from the body corporate. He was prevented



AT LAST: The tenant takes occupation of the South Beach flat after repeatedly being denied access

from giving occupation to a tenant who was not "approved" by the trustees.

The situation can be quite an ordeal for a tenant who is prevented access by trustees for failing to provide a copy of his or her identity document and of those of other occupants. Trustees, who insist that occupation of a tenant is conditional upon providing a copy of the lease contract and ID, are acting unlawfully.

While it can be argued that there is no interview or 'screening' of the tenant, this is another way of 'gate-keeping' for which the trustees have no legal or moral basis.

Nneke Charity Okese did not anticipate a 'bureaucratic' nightmare outside Home Affairs when she signed a lease contract for a dwelling at Penzance in South Beach. Landlady Naseema Latib through her agent Abasi Jumu of Abasi Properties Estate Agents was satisfied with Okese as a tenant.

A lease was signed and the tenant was overjoyed at having secured tenure in a foreign

country. She was eager to take occupation but found herself helpless even though her landlady and the estate agent stood by her side. Okese and Jumu were referred to our offices last Wednesday by Latib to intervene in a deadlock that occurred when a trustee responsible for administering a set of procedures at the body corporate of Penzance refused entry to them.

We spoke to a Farhad Moosa Lockhat, who denied that he was the chairperson of the body corporate or that he prevented access.

On Thursday, when Okese and Jumu returned to our offices, in a state of bewilderment, we spoke to Lockhat again. Again, he denied being the chairperson and obstructing Okese from taking occupation.

We refused to listen to his explanation of the procedure of the body corporate, which he did the day before.

We accompanied Okese, Jumu and the landlady's brother in-law to the building, but was not allowed beyond the glass door entrance by the security personnel, a Mr. Charles. He explained that he was given instructions by the chairman Farhad Moosa Lockhat, not to allow the tenant or the agent access to the building. We put certain questions to Lockhat and recorded our client's instructions. We informed him that MaxProp, the managing agent and Siyaya Security, which provides the security services, confirmed that a he was the chairman of the body corporate of Penzance, and that Charles was acting on his instructions not to allow Okese access to her flat.

We placed on record in an "open" letter', among other things, that any attempt by him, any trustee and / or by the security personnel to prevent our client access to Penzance and to her flat, or from taking occupation thereof, or moving in her belongings, will compel our client to seek an urgent relief against all those acting unlawfully.

In the event of any legal proceedings, the court would be asked to make an adverse cost order. We copied the letters to MaxProp and Siyaya Security. It must be noted that MaxProp was not implicated in the unlawful conduct in any

way nor involved in the body corporate's procedure for tenants.

We received a response from Lockhat Attorneys whose sole proprietor is Farhad Moosa Lockhat. Lockhat Attorneys acting for Farhad Moosa Lockhat, denied that he was the chairman but confirmed that he was one of the trustees. He denied giving Charles instructions to prevent Okese from taking occupation. Lockhat Attorneys state: -

Our client re-iterates that an owner/letting agent is requested to provide the trustees with pertinent information/documentation prior to the tenant/s occupation. This request is made in the interests of safety and security of the building and it's residents and is purely voluntary.

Your client, via the letting agent, Abasi Properties, failed to provide the trustees with information/documentation regarding the other occupants of the dwelling. A request in this regard was made to the letting agent, however he failed to comply. He later asked for the return of the documents, which was left with the security guard early this morning for collection."

The above contradictions confirm that: -

- there is a procedure to which an owner or her letting agent may voluntarily surrender documents but this voluntary act must be complied with;
- the documents that were not given to the body corporate were returned.
- Lockhat volunteered the above in his capacity as one of the trustees.

A contract, including a lease contract, between contracting parties is private and confidential in terms of privity of contract and other rules of law. It is also an offence in terms of our law for a third party, like the trustees, wanting to have in their possession a tenant's identity document.

On Friday, the OCR team with the agent monitored Okese's moving into her flat, unhindered and we were all warmly welcomed by Charles.

Dr Sayed Iqbal Mohamed is the chairman, *Organisation of Civic Rights*. For tenants' rights advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451. www.ocr.org.za