

# The role of a mediator in resolving tenancy disputes

*Sayed Iqbal Mohamed*

LANDLORDS and tenants of residential dwellings can settle disputes in any province, since the Rental Housing Tribunals have now been established in all nine provinces. It is important for parties to know the limitations of a mediator, or the extent of the legal powers of members conducting a hearing.

In terms of section 13(1) of the Rental Housing Act 50 of 1999, "any tenant or landlord or group of tenants or landlords or interest group may in the prescribed manner lodge a complaint with the Tribunal concerning an unfair practice". Section 13(2)(c) empowers the Tribunal to appoint a mediator to resolve a dispute that constitutes an unfair practice or, in terms of 13(2)(d), conduct a hearing if mediation is not considered a viable option, or in the event mediation has failed.

The Tribunal can appoint one of its members, a member of staff or any person it deems fit and proper to mediate a dispute. The mediator cannot take sides, need to have knowledge of the Rental Housing Act, relevant laws relating to tenancy and should explain the mediation procedure to the disputants (tenant and landlord).

The mediator, as an impartial third party facilitates a face-to-face meeting of the

disputants. The complaint lodged provides the basis for the mediator to identify the issues and to contextualise the discussion in relation to the relevant law and regulations. The skills of the mediator ensure that he or she negotiates efficiently and effectively and does not impose a decision on the disputants.

A party has the right to an interpreter, may choose to have a representative and should raise any objection regarding jurisdiction prior to the commencement of the mediation process, e.g., that the dispute relates to business premises or a sectional title scheme and not between tenant and landlord of a residential dwelling.

A confidentiality agreement is signed by all the parties at the outset. A party cannot be coerced in any way to sign a mediation agreement because an agreement must be reached freely, voluntarily and on the basis of informed consent. If a satisfactory resolution cannot be reached regarding any other aspect of a dispute, this is referred to the Tribunal for a hearing.

Section 12(b) allows for a mediation agreement to be made a ruling of a Tribunal; a ruling [13(13)] is deemed to be an order of a magistrate's court in terms of the Magistrate's Court Act, 1944 (Act No. 32 of 1944). Parties are given a signed copy of a mediation agreement at the conclusion of a successful mediation.

Provincial Tribunals	Telephone numbers
North West	018 387 6057
Johannesburg	011 355 4000
KwaZulu Natal	031 336 5222
Limpopo	015 295 6851
Eastern Cape	040 639 1769
Northern Cape	053 830 9544
Western Cape	021 483 4190
Mpumalanga	013 766 6200
Free State	051 405 5034