

The Rental Housing Amendment Bill 2007

What are some of the changes and challenges?

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The Rental Housing Amendment Bill 2007 ("the RHA Bill") seeks to grant the provincial Rental Housing Tribunals (RHTs) additional powers to further balance the rights, duties and obligations of tenants and landlords. The overall objective of the Bill is "to amend the Rental Housing Act, 1999, so as to substitute a definition; to make further provision for rulings by Rental Housing Tribunals; to expand the provisions pertaining to leases; and to extend the period allowed for the filling of vacancies in Rental Housing Tribunals; and to provide for matters connected therewith."

The amendments could be divided into two major categories: -

1. Legal powers
 - 1.1. Extending the powers of "exclusive jurisdiction," conferred upon the RHTs by re-defining the concept of 'unfair practice'.
 - 1.2. Granting powers of spoliation, interdicts and attachment
2. Legal, implementation and administrative powers
 - 2.1. National regulations
 - 2.2. Enforcements of the RHTs' rulings

The Rental Housing Act, 50 of 1999 ("the Act") defined "unfair practice" as "a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord". The RHA Bill¹ has included the following to the existing definition:

" **'unfair practice'** means—
(a) any act or omission by a landlord or tenant in contravention of this Act; or
(b) a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord."

Together with national Unfair Practices Regulations to be published shortly for public comments, landlords, tenants and the RHTs would be able to identify "unfair practices" as prescribed in the regulations. In addition to the Regs, the re-definition of "unfair practice," means that a contravention of the any provision of the Act would also constitute an unfair practice".

Let us take for example s4 of the Act that deals with certain rights and obligations of a tenant and a landlord. The landlord cannot discriminate against a prospective tenant; the

"Unfair Practice"

¹ Amendment of section 1 of Act 50 of 1999

tenant's right to privacy and illegal seizure of his or her possession are protected, including those of the tenant's household and visitors. The landlord's rights includes prompt and regular payment of rental, to recover unpaid rental and a claim for damage to the dwelling by the tenant, members of the tenant's household and visitors.

A tenant may lodge a complaint for invasion of privacy or the landlady may register a complaint for unpaid rentals and utility charges. The RHT will either resolve the complaint through mediation or deliver a ruling through an adjudication process (hearing). The complaint relating to invasion of privacy or arrear rentals, unless listed in the Unfair Practices Regulations, would not constitute an "unfair practice." To what purpose this new definition would assist the aggrieved party is not clear. The RHT in any event would still make a decision based on the contravention of the Act in the absence of [additional] punitive sanction, unless this is specified in the Regulations. It does however, clarify and provide the legal basis for lodging a complaint of an "unfair practice."

Under the present legislation, it would appear that a tenant or landlord or an interest group could lodge a complaint that relates to an "unfair practice."² The preliminary investigation to determine if the complaint is valid is based on the assessment of the

² Complaints

13 (1) 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.

existence of an "unfair practice"³. The ultimate resolution by the RHT is to give a ruling (equivalent to a magistrates' court judgment) based on whether an "unfair practice" exists.⁴ Even if the MEC for housing in a province were to provide an exhaustive list of unfair practices through Regulations, major provisions of the Act would still be excluded.

³ 13 (2) Once a complaint has been lodged with the Tribunal, the Tribunal must, if it appears that there is a dispute in respect of a matter which may constitute an unfair practice –

- (a) list particulars of the dwelling to which the complaint refers in the register referred to in subsection (8);
- (b) through its staff conduct such preliminary investigations as may be necessary to determine whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice;

⁴ 13 (4) Where a Tribunal, at the conclusion of a hearing in terms of paragraph (d) of subsection (2) is of the view that an unfair practice exists, it may -

- (a) rule that any person must comply with a provision of the regulations relating to unfair practices;
- (b) 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;
- (c) make any other ruling that is just and fair to terminate any unfair practice, including, without detracting from the generality of the foregoing, a ruling to discontinue –
 - (i) overcrowding;
 - (ii) unacceptable living conditions;
 - (iii) exploitative rentals; or
 - (iv) lack of maintenance.

The re-definition of an “unfair practice” therefore enables parties to a dispute to lodge a complaint regarding “any act or omission by a landlord or tenant in contravention of this Act” or “a practice unreasonably prejudicing the rights or interests of a tenant or a landlord” as prescribed (in the Unfair Practices Regulations). It is another matter as to the acceptance of complaints by the RHTs and how staff and members apply their minds in the context of the present limited definition.

Spoliation, Attachment Orders and Interdicts⁵

The public and other stakeholders have engaged in contentious debates over the past five years. Since the RHTs perform a judicial function to dispense a speedy resolution to tenant-landlord grievances it needed to have its jurisdiction extended to include the granting of eviction orders, interdicts, spoliation and attachment orders. Eviction was excluded due to the Constitutional provision in s26⁶.

An addition to s13(c) of the following paragraph extends the RHTs’ jurisdiction:

“(c) issue spoliation and attachment orders and grant interdicts.”;

Self-help remedies like dispossessing tenants of occupation through illegal lockouts and disconnection of services, for good reasons or bad faith, are reported regularly to the RHTs. The

⁵ Amendment of section 13 of Act 50 of 1999

⁶ Mohamed, S I (2007). Rental Housing Tribunals and Evictions. Property Law Digest, Vol 11, Part 4, December 2007. Durban: LexisNexis

RHTs are unable to hear such complaints [on an urgent basis] and to grant interim and *ex parte* rulings. Landlords who lodge complaints in respect of unpaid rentals and other arrears cannot make an application to attach the possessions of tenants. Should a tenant register a complaint with the RHT, the landlord / landlady is precluded from bringing an action in Magistrates’ court until the complaint is dealt with by the RHT.

Where the tenant lodges a complaint to stall an eviction or is based on trivial grounds and uses the law to occupy the dwelling without rental payment, the landlord / landlady is greatly prejudiced. Attachment orders and interdicts would bring the much needed relief.

An unlawful dispossession by a party who has the legal right to possession of the dwelling does not translate into proper legal relief sought. The unlawful action must be corrected first before the landlord / landlady can seek legal remedy to his or her legal right to regain possession⁷ The amended provisions will provide a cost effective recourse to justice to a tenant despoiled but will also enable an aggrieved landlord / landlady to seek relief.

The challenge is whether the procedure at the RHTs will be regulated and clear rules established for parties seeking urgent relief. Members and support staff need to be capacitated to handle what would be

⁷ Stocks Housing (Cape) Pty Ltd v Chief Executive Director, Department of Education and Culture Services, and Others, 1996 (4) SA 231

an increased case load that would also require expertise.

Standardised Regulations⁸

The Act provides the MEC for housing in each province to promulgate regulations relating to unfair practice. While the MEC *may* make regulations relating to unfair practices in terms of s15, the Act makes it incumbent on the RHTs to look at unfair practice regulations in deciding a matter [s13(4)] or in the first instance, to determine that a complaint relating to an unfair practice exist [s13(2)]. This has caused confusion and one RHT does not have regulations.

The RHA Bill places the responsibility with the national Minister of housing who must, in consultation with the standing or portfolio committee on housing and every MEC, make regulations relating to (unfair practices)⁹. RHTs will have a

⁸ Amendment of section 15 of Act 50 of 1999
6. Section 15 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The **[MEC may] Minister must**, after consultation with the **[the relevant] standing or portfolio committee on housing [of the Provincial Legislature responsible for housing matters in the province] and every MEC**, by notice in the *Gazette*, make regulations relating to—";

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(a) anything which may or must be prescribed under Chapter 4;
(b) the procedures and manner in which the proceedings of the Tribunal must be conducted;
(c) the forms and certificates to be used;

standardised set of regulations that is being informed by all roleplayers.

The Unfair Practices Regulations together with the Procedural Regulations is to be published by March 2008 for public comments. The RHA Bill and the two sets of Regulations are to be signed into law simultaneously once all the legal requirements are complied with.

Enforcements of the RHTs' rulings

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- (d) the notices to be given by the Tribunal in the performance of its functions, powers and duties;
 - (e) the functions, powers and duties of inspectors for the purpose of carrying out the provisions of this Act;
 - (f) unfair practices, which, amongst other things may relate to –
 - (i) the changing of locks;
 - (ii) deposits;
 - (iii) damage to property;
 - (iv) demolitions and conversions;
 - (v) eviction;
 - (vi) forced entry and obstruction of entry;
 - (vii) House Rules, subject to the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), where applicable;
 - (viii) intimidation;
 - (ix) issuing of receipts;
 - (x) tenants committees;
 - (xi) municipal services;
 - (xii) nuisances;
 - (xiii) overcrowding and health matters;
 - (xiv) tenant activities;
 - (xv) maintenance;
 - (xvi) reconstruction or refurbishment work; or
 - (g) anything which is necessary to prescribe in order to achieve the purposes of this Act.

Regulations will be central to providing a better service to the public because parties can for the first time challenge RHTs that do not follow procedure in respect of notification: service of summons or mediation notices; how mediation / hearings are to be conducted.

How does a RHT deal with a party that ignores a summons? The RHTs are not successful regarding enforcements of its rulings and certain administrative processes. Parties who ignore its rulings or respondents who refuse to attend a hearing can display contempt without any legal consequences. Amending¹⁰ s13(13) of the Act may not solve the daunting challenge RHTs face. The amendment states: "*A ruling by the Tribunal is deemed to be an order of a magistrate's court in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and is enforced in terms of that Act.*"; and...

The question is who will enforce the "order"? Sheriffs would not be able to execute on a ruling and, in fact, will not act on the instructions of the RHTs. The extended jurisdiction with spoliation, attachments and interdicts would add to the prevailing perception of RHTs being ineffective. Five years on, an administrative decision required between national departments of housing, justice and safety and security to make enforcements possible has not materialised. Enforcement of an order of a magistrate's court in terms of the Magistrates' Courts Act, despite the distinct and compelling amendments in the RHA Bill, will not help persons hoping for a cost effective, speedy resolution. An administrative decision

between the relevant Ministers and departments is long overdue for the RHTs to have a meaningful relevance in the lives of desperate *bona fide* tenants and landlords.

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Mohamed, S. I. 'The Rental Housing Amendment Bill 2007: What are some of the changes and challenges?' In *LexisNexis Property Law Digest* 12(1):9-11, March 2008. Durban, South Africa.

¹⁰ Amendment of section 13 of Act 50 of 1999