

# Rental Housing Tribunals and Evictions

## *Will the Tribunals have jurisdiction regarding evictions?*

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Should the provincial Rental Housing Tribunals (RHTs) be given powers to evict? Few members of the RHTs mooted this idea several years ago, leading to a proposal that was eventually rejected by specific exclusion from the Rental Housing Amendment Bill (“the Bill”) 2007. When the Bill appeared before parliament’s housing portfolio committee, there appeared to be an impasse on the eviction issue.

The Bill will lead to the second generation Rental Housing legislation and is therefore the first set of amendments. The Bill addresses certain implementation problems, especially enforcement of its rulings that are deemed to be Magistrate’s Court judgments. Since the promulgation of the Rental Housing Act, 1999 (Act No. 50 of 1999), on 1 August 2000, RHTs have encountered serious difficulties in giving effect to its rulings. The amendment also clarifies the jurisdiction of RHTs regarding eviction orders. The argument was why the RHTs should not be given the powers to grant eviction orders.

Section 5 of the Bill reads:

Section 13 of the principal Act is hereby amended—

(b) by the insertion after subsection (11) of the following subsection:

“(11A) The Tribunal must refer any matter that relates to eviction to a competent court.”

(e) by the addition of the following subsection:

“(14) The Tribunal does not have jurisdiction to hear applications for eviction orders.”

Why RHTs cannot be given powers to grant eviction orders:

The present composition of the RHTs, except for Western Cape is not established within the ambit of the Rental Housing Act 50 of 1999 (“the Act”). The rationale of section 9 of the Act is to ensure a fair representation of interest groups who have expertise in consumer matters pertaining to rental housing, management or housing development matters.

The first challenge would be to re-constitute the Tribunals.

Assuming that representatives from estate agents, consumer, management or housing development matters are appointed, this does not mean that their expertise would allow them to evict

tenants. Such expertise is required for a balanced contribution by members in arriving at a just and equitable ruling.

Members, despite their legal backgrounds (law is not a pre-requisite for an appointment to the Tribunal), do not have the skills and training to perform the task of magistrates and judges. The Act made certain specific changes to the common law. Members are required to have a sound knowledge of not only the Act but also decided cases, common law, evidentiary rules, natural justice; and the application thereof, in arriving at a decision (ruling). A perusal of some of the rulings indicates the dearth of cogent legal arguments. There are exceptions with respect to members who are diligent, apply the law and use their legal experience to further the aims and objectives of the Act.

#### THE SECOND CHALLENGE WOULD BE TO TRAIN MEMBERS.

Tribunals presently have to decide whether a notice to vacate is an unfair practice. However, the Tribunal does not request a municipality to provide accommodation in a hostile rental market where the demand far exceeds the supply of residential accommodation.

The Act allows for a review. It does not allow for the ruling to be appealed. The Tribunal's eviction order or order not to grant an eviction would therefore be final.

Assuming that the Tribunals are properly constituted, members are trained and all the expertise are present; the major

challenge is to amend the constitution of South Africa because the Tribunal is not a court.

#### **THE TRIBUNAL IS NOT A COURT<sup>1</sup>.**

Section 26 (3) of the Constitution states that no one may be evicted from their home without an order of court, made after considering all the relevant circumstances. This alone renders all discussion sophistic because of the constitutionality of the Act.

#### **ARBITRARY EVICTIONS**

It therefore follows that the Tribunal not being a court, would be granting arbitrary evictions as Section 26 (3) of the Constitution further states that no legislation may permit arbitrary evictions.

The exclusion of jurisdiction to grant an eviction in the Bill is therefore correct.

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<sup>1</sup> Judicial System - s166 – Rental Housing Tribunal is not listed as a court.