

# THE RENTAL HOUSING AMENDMENT BILL 2006

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The Rental Housing Amendment Bill 2006 (“the Bill”) published under Notice 1853 of 2006 GG 29503, 22 December 2006, gave the public until 2 February 2007 to make written comments on the drafted Bill. The intention is to give the Rental Housing Tribunal’s rulings (“the Tribunal”) implementation authority, expand the provisions of residential leases, extend the definition of “unfair practice” and clarify the requirement for the appointment of the deputy chairperson. The Bill therefore further modifies the common law and the law of contract relating to residential leases.

Amendments are necessary to modify the first generation Rental Housing Act 50 of 1999 (“the RHA” or the principal Act”) that was introduced as a framework legislation to regulate the relationship between tenant and landlord within the burgeoning democratisation of the legal system. The RHA was promulgated in August 2000 with the responsibility vested in the Member of the Executive for Housing (“MEC”) in each of the nine provinces governments to give effect to the RHA through the establishment of the Tribunal.

The role of the Tribunal was intended to provide a mechanism for dispute resolution with the least amount of inconvenience and cost to the disputants. A speedy process of justice to resolving disputes that would otherwise remain in the clogged legal

system for months, if not years, underlined the need for overhauling tenant-landlord legislation, especially the Rent Control Act 86 of 1976. The latter was rooted in the colonial period and flawed by the apartheid application; the rent boards were not gender sensitive in its composition and operated for “White” and later “Indian” tenants and landlords only.

The Tribunal was empowered to deal with dispute resolution in respect of residential dwellings and given exclusive jurisdiction relating to unfair practice between tenant and landlord. Any dispute relating to an unfair practice must be determined by the Tribunal unless the matter was already before another court (section 13(9) of the RHA). The Tribunal is therefore given the power to terminate an unfair practice that includes a tenant’s failure or refusal to pay rental, illegal lockout, unlawful disconnection of services such as electricity and water supply, tenant creating a nuisance, overcrowding, exploitative rentals, lack of maintenance and unacceptable living conditions.

## THE BILL ENVISAGES SEVERAL CHANGES THAT INCLUDES:

- The redefinition of an “unfair practice”.
- Provisions relating to security deposit.

- Ensuring the Tribunal's rulings has the force of law. Tribunals have encountered difficulties in giving effect to their rulings even though a ruling is deemed to be a Magistrate's Court judgment.
- The cost of written leases is to be paid by tenants provided proof of real cost is available.
- Hypothecation of lease.
- The Tribunals would also be given the powers to grant evictions.
- The national Minister of Housing will be given the power to make regulations and not the provincial MECs of housing.

#### EXCLUDED DEFINITION OF "UNFAIR PRACTICE"

An "unfair practice" in the principal Act is defined as a "practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord." An insertion to this definition is the following:

"Any act or omission by a landlord or a tenant in contravention of this Act".

#### SECURITY DEPOSIT

Section 393) of the principal Act reads: "A lease will be deemed to include terms, enforceable in a competent court, to the effect that:

- (c) the landlord may require a tenant, before moving into the dwelling, to pay a deposit which, at the time, may not exceed an amount

specified in the agreement or otherwise agreed to between the parties."

An insertion "and which is a once-off payment, unaffected by subsequent rental increases" will render invalid a written escalation clause relating to deposits.

#### ENFORCEMENT OF RULINGS

The Tribunal's ruling is deemed to be an order of a Magistrate's Court in terms of the Magistrate's Court Act 32 of 1944. Herein lies a major predicament, that of enforcing its rulings. In terms of section 13(13) of the principal Act, a ruling by the Tribunal is deemed to be an order of a Magistrate's Court in terms of the Magistrate's Court Act 32 of 1944. The amendment will include "and shall be enforced in terms of that Act."

#### HYPOTHEC

The Tribunals do not have powers regarding a landlord's hypothec. Illegal seizure of the tenants' goods that often results in complaints being lodged with the Tribunals, render the landlords' hypothec ineffective. The landlord has a real right to the tenant's goods that are in his or her dwelling but has to be perfected by the court. The Tribunals would be given the authority to give legal effect to the landlord's hypothec.

#### EVICTIONS

Where a complaint lodged with the Tribunal concerns a notice to vacate, the Tribunal cannot grant an ejection order. Its powers are limited to determining whether the termination of the lease contract constitutes an "unfair practice". If the ruling is in the landlord's favour, she or he would then

have to start legal proceedings through the Magistrate's or High Court. The amendment would allow a cheaper and speedier process through the Tribunal to obtain an eviction order.

## REGULATIONS

The matter of regulations has been confusing because of reference has been confusing because of reference in the principal Act to "may" and "must". For instance:

- Section 5(6) (g) states that the obligations of the tenant and the landlord, which must not detract from the provisions of subsection (3) or the regulations relating to unfair practice.
- The Tribunal can rule, in terms of section 1394(a), that any person must comply with a provision of the regulations relating to unfair practices.
- Section 13(6) states that when acting in terms of subsection (4), the Tribunal must have regard to the regulations in respect of unfair practices.
- Section 15 on the other hand states that MEC may make regulations.

Whereas section 15 of the RHA stated that the MEC **may** after consultation with the relevant standing or portfolio committee of the Provincial Legislature responsible for housing matters in the province make regulations relating to inter alia, procedures and proceedings, forms and certificates to be used and matters relating to unfair practice, the amendment will make it incumbent on

the national Minister of Housing to prescribe regulations in consultation with every MEC.

## OTHER AMENDMENTS REQUIRED

### Third Party

There are other changes required for the Tribunal to deal effectively with tenancies. Among the changes needed is the jurisdiction over a third party. Often, there is interference of the rights and privacy of a landlord and tenant by a third party, e.g. supervisor or trustees of a body corporate. Neither the landlord nor the tenant can lodge a complaint against a third party because the Tribunal does not have jurisdiction. An amendment that would enable a landlord or a tenant to lodge a complaint against a third party who interferes with the tenancy, is one way of providing a cost effective and speedy remedy.

**Section 19 Savings** of the principal Act needs to be deleted. The support staff of some Tribunals continues to inform tenants that rental increase is pegged at 10%; the public generally have a similar misconception. The 10% related to rent controlled dwellings for a three year period that ended in July 2003.

### Warrant of Habitability

Habitability has not formed part of our law and an amendment should include such a provision. In every written or oral lease or rental agreement for residential dwelling the landlord shall be deemed to covenant and warrant that the premises so leased or rented and all areas used in connection therewith in common with other tenants or residents are fit for human habitation and for the uses reasonably

intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to life, health or safety.

### **Rates**

This is payable by the owner. Often, tenants are “compelled” by a written lease contract to pay for rates and taxes whereby parties agree to regulate the liability that the tenant will pay and discharge all such charges. This must specifically be prohibited in the amended legislation.

Parties and their representatives who have appeared before the Tribunal for mediations and hearings can provide valuable information. They could share their experiences relating to processes and procedures and the performance of the administrative support staff in respect of the *batho pele* or people first principles. Public feedback through public meetings is essential to have a better informed position for the amending of the RHA.

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Mohamed, S. I. 'The Rental Housing Amendment Bill 2006.' In *LexisNexis Property Law Digest*, 11(1): 6-8, March 2007. Durban, South Africa.