

Justice being paralysed

Without legal mandate, RHTs operating beyond their authority

Daily News Tuesday September 29 2009

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THE court is the last bastion of hope to enforce one's rights, but its decision can create great discomfort, especially if one party, being poor migrant tenants, are given three days to vacate their dwellings.

Legal action can be frustrating, time consuming and costly, and on the scale of financial equity and economic clout, poor tenants are often unable to defend themselves or to take their matter further.

The tenants of Skypark in Durban were fortunate to be blessed with an attorney and two advocates who have volunteered their time to defend their contractual rights as well as bring several applications before the high courts.

Let us look at these cases very briefly in context.

The landlord, Sherman Investments (Pty) Limited issued several notices, in 2007 and 2008 requiring the tenants to vacate their flats.

The notices were improper, contradictory and even cancelled each other, but one important fact from one of the notices was that the landlord had to provide three calendar months notice.

This, it failed to do.

The tenants lodged two complaints with the KwaZulu Natal Rental Housing Tribunal (RHT) regarding an unfair practice dispute in early 2008, which ought to be resolved within three months as required by an Act of parliament, the Rental Housing Act.

The RHT, however heard the matter in January 2009 and appeared to have looked at a different notice, one issued in September 2008, that was not even placed before it.

Tenants were aggrieved at the RHT's approach and its decision. They were unable to secure a copy of the recordings of its proceedings despite several attempts.

The RHT's ruling (which is annexed to the court documents) leaves much to be desired, legally speaking.

Its few lines are fraught with ambiguity and legal confusion on fundamental contractual issues. It appears that the RHT did not examine a just cause eviction, the defective notices and the offer and acceptance rule in respect of the rental increases.

Armed with the RHT's decision, the landlord then started legal proceedings through the High Court of KwaZulu Natal¹ and last week, the court found in its favour.

Perusing the court papers, it is respectfully submitted that the judgment should have turned on the disputes of facts in favour of the tenants so that the case is set down for oral evidence.

This did not happen, notwithstanding our legal precedent. More compelling reasons were matters surrounding the Rental

¹ Case No. 1187/2009

Housing Tribunal's pivotal role in the dispute.

The derisory ruling aside, the powers of the RHT and its very existence were called into question by the tenants' application brought before the KwaZulu Natal High court, Pietermaritzburg².

This was within the judge's knowledge that the tenants turned to the court to review and set aside the RHT's decision and direct a new hearing under a properly constituted Tribunal, since all unfair practices dispute must be resolved by the RHT.

Preconditioned to this is the fact that there must be Unfair Practices and Procedural regulations in terms of the Rental Housing Act 50 of 1999 as amended.

A letter, annexed to the court's papers, from the Minister of Human Settlements Tokyo Sexwale, one of the respondents, confirms that there are no Regulations.

In other words, the Minister has not carried out its statutory mandate and, as a consequence, the provincial RHTs cannot hear or mediate disputes until regulations are promulgated.

The tenants therefore aver that the KZN RHT has no powers and has accordingly acted *ultra vires*, that is, beyond its authority.

The other respondents are the KwaZulu Natal Rental Housing Tribunal, MEC Maggie Govender, Minister of Human Settlements for KZN and Sherman Investments (Pty) Limited.

This is the first reason to set aside the ruling of the KZN RHT.

In terms of section 9(2) (b) of the RHA, members to the RHTs are appointed only after the MEC for housing has consulted

with the portfolio committee of the Provincial Legislature.

Except for KZN, prospective short listed candidates undergo intensive interviews by the respective provincial portfolio committees to ensure that they have the qualifications as required by the RHA (see section 9 of the RHA; unfortunately, law is not a requirement).

The second challenge in papers before the Pietermaritzburg court is the establishment of the KZN Rental Housing Tribunal. Despite three written letters to the MEC to provide minutes of the statutory procedure followed, as contained in section 9 of the RHA, there was no response.

"To date we have not received a response to the said letters and can only assume that the Tribunal which heard our matter was not properly constituted and therefore its decision must be set aside on review".

This constitutes the tenants' second basis to have the ruling of the KZN RHT set aside. Against these developments, on Friday, September 25, 2009, tenants were successful in being granted an interim order³, interdicting and restraining Sherman Investments (Pty) Limited and the Sheriff, Durban Central from evicting them.

They are now hoping to appeal against the court's judgment while also waiting for a court date to hear their application regarding the Rental Housing Tribunal. The case of the Tribunal may ultimately have serious implications for all disputes before the KZN RHT since March 2008, and all RHTs would be affected similarly.

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² Case No. 8036/2009 September 17, 2009

³ Case No. 13384/09 September 23, 2009