

Merits cannot be appealed

REVIEWS OF TRIBUNAL DECISIONS ONLY DEAL WITH MEMBERS' CONDUCT

PARTIES in dispute before a court can take the judgment on appeal if grounds exist to have it adjudicated at a higher level.

In the case of a matter decided by the Rental Housing Tribunal (RHT), an aggrieved party has to approach the High court in terms of section 17 of the Rental Housing Act 50 of 1999 (RHA), to have the proceedings of the RHT reviewed.

Review procedures are concerned with the conduct of the members, whether they were biased or acted prejudicially against a party.

The merits of the case cannot be appealed, although there is a view that since the ruling of the RHT is a judgment of a Magistrate's court and enforceable in that court, a party should be allowed to file an appeal.

Approaching the High court for relief is costly, whether to review the procedures or to file an appeal, if that were possible.

Review does not necessarily mean the court would set aside a ruling or redirect the RHT to hear the matter *de novo* (from the start; afresh before a different group of commissioners).

In reviewing an application, the court may confirm the RHT's ruling.

Unlike judicial officers of the courts, RHT members are under constant pressure to finalise a large case load on any given day.

A complaint with the RHT may be dealt with within two hours (through oral evidence) and a ruling given shortly thereafter.

Evidence

If it is heard in a court, it may require at least a day of oral evidence and judgment given later.

The court proceedings, based on English law, are also reinforced by a rigorous and well established set of rules for court processes from inception (issuing of summons) to the actual court proceedings that culminates in its order.

The RHT does not have regulations, therefore no procedure exists and no documents- such as complaint forms and summons- can used if not regulated or gazetted.

Below is an example of a ruling with comments.

KWAZULU NATAL RENTAL HOUSING TRIBUNAL:- Case No. 13/8/3/1664/08

Ruling of the Rental Housing Tribunal in terms of section 13 of the Rental Housing Act/ 50 of 1999

In the matter of Complainant: Ms S Singh vs Respondent: Mr A Georgiades

WHEREAS the Complainant and Respondent were in dispute under Case No. 13/8/3/1664/08 before the Tribunal,

duly appointed by D Moloi (chairperson), P Dabideen (member) and N Kuzwayo (member)

As contemplated in section 10(5) of the Rental Housing Act (Act No 50 of 1999).

Having heard the evidence of all the parties, the KwaZulu Natal Rental Housing Tribunal makes the following Ruling in terms of section 13 of the Rental Housing Act (Act No 50 of 1999) :-

The Complainant has lodged a complaint against the Respondent (landlord) for illegal lockout. Complainant presented evidence that she had been in arrears with her rental for two months (i.e. September and October @ R1700pm) and on 6 November 2008 she found out that the landlord had locked them out and she had been unable to access the premises since then.

Mr Ismail further presented evidence that from the day they were locked out they had been living in the car and when they had money they slept at various lodges (Receipts to the amount of R1 130, 00 were presented as evidence).

The respondent admitted that he had locked the premises to secure the complainants property as she was in arrears with her rental.

Having heard the evidence, the Tribunal therefore makes the following ruling:-

- (a) The lockout of the premises is unfair and illegal;
- (b) The Respondent is ordered to open the premises immediately;
- (c) The complainant is ordered to pay the Respondent an amount of R3 400, 00 which is the arrear rental for Sept & October plus an amount of R340, 00 for 6 days occupation in November, which gives the total of R3 740.

- (d) The Respondent is ordered to pay the Complainant damages to the amount of R1 130. 00 in respect of expenses incurred as a result of the lockout which amount will be deducted from the arrear rental, thus leaving the Complainant with an amount of R2 610, 00 to pay to the Respondent.

(signed by the following: D. Moloi (chairperson), P. Dabideen and N. Khuzwayo)

Comment

The ruling should have been the restoration of occupation, nothing less, nothing more.

A separate enquiry regarding arrears, costs and damages would follow in the event a party lodges a complaint thereto.

This is the established practice of our law, binding in all respect on the RHTs. (Refer to discussion above on Spoliation [3.28 and 4]).

It is a fundamental principle that no man is allowed to take the law into his own hands, no one is permitted to dispossess another forcibly or wrongfully and against his consent of the possession of property, whether movable or immovable.

“If he does so, the Court will summarily restore the *status quo ante*¹, and will do that as a preliminary to any inquiry or investigation into the merits of the dispute.”²

From ‘*Tenant and Landlord in South Africa*’ (January 2010 Edition) by **Dr. Sayed Iqbal Mohamed**, Chairperson, Organisation of Civic Rights; For tenant’s rights’ advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451

¹ *status quo ante* means the position before the unlawful action took place.

² *Nino Bonino v De Lange* 1906 TS 120, at 122.