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Unpacking the Rental Housing Amendment Act 35 of 2014

The Rental Housing Act 50 of 1999 (the Act) came into force on 1 August 2000. This Act regulates the relationship between landlords and tenants and it provides for dispute resolution by the Rental Housing Tribunal. This Act has often been criticised for its shortcomings especially pertaining to enforcement (SI Mohamed 'Enforcement of Rental Housing Tribunal Orders' June 2008 *Property Law Digest* 3; PN Stoop 'The law of lease' 2008 *Annual Survey of South African Law* 891; SI Mohamed 'RHTs "Exclusive" Jurisdiction over Unfair Practice' June 2012 *Property Law Digest* 9). However, the Constitutional Court in *Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd* 2012 (3) SA 531 (CC) stressed the importance of the Act and the Rental Housing Tribunal. The shortcomings of the Act have recently been addressed by enactment of the Rental Housing Amendment Act 35 of 2014 (Amendment Act), which will come into operation on a date to be proclaimed. Only a few landlords, tenants or practitioners have taken notice of the Amendment Act despite it having a substantial impact on the rental industry, and landlords and tenants. Some of the major amendments are pointed out in the overview below.

The Rental Housing Act 50 of 1999 prior to amendments - purpose

Several practical and statutory weaknesses have evolved ever since the introduction of the Act in 2000. Although the Constitutional Court confirmed the position of the Rental Housing Tribunal as the body conferred with 'special' powers to determine whether the rights of the landlord or tenant has been violated by and unfair practice some provinces still have to establish a Rental Housing Tribunal. Another weakness relates to the Rental Housing Tribunal having no 'teeth' since it could not enforce its ruling. Additionally, commissioners and staff appointed by the Rental Housing Tribunal did not all undergo relevant training, and municipalities have failed to establish rental housing information offices as required by Rental Housing Amendment Act 43 of 2007 (Amendment Act of 2007) (SI Mohamed 'The Rental Housing Act: Second Generation Amendments' March 2014 *Property Law Digest* 6).

Post Amendment

The Amendment Act was drafted to address some of these challenges. The aims of the Amendment Act includes to -

- set out the rights and obligations of the tenants and landlords in a coherent manner;
- require leases to be in writing;
- extend the application of ch 4 to all provinces; require Members of the Executive Council (MEC) (the members of the provincial executive council

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concerned with housing matters) to establish Rental Housing Tribunals in all provinces;

- extend the powers of the Rental Housing Tribunals;
- provide for an appeal process;
- require all local municipalities to have Rental Housing Information Offices;
- provide for norms and standards related to rental housing; and
- to extend offences.

Responsibility to promote rental housing

The responsibility of the government to promote rental housing is regulated by subs 2(5) and (6), which amend s 2 of the Act. The Minister of Human Settlements is obliged, through means, to develop guidelines, programmes, directives and measures to promote rental housing, and to monitor and assess the impact of the Act on landlords and tenants, especially on poor and vulnerable tenants. The duties of national and provincial government with regard to rental housing are provided for in the new subs 3(5) and (6). The government has to develop and fund programmes to train members of Rental Housing Tribunals and other officials appointed in terms of the Act. Provincial governments are obliged to assist local municipalities not yet on level three accreditation, in establishing Rental Housing Information Offices.

Relations between tenants and landlords

Chapter 3 of the Act, which is amended substantially, regulates the rights and duties of landlords and tenants. The newly inserted subs 4A and 4B respectively regulate the rights and obligations of tenants and landlords. Sections 16(aA) and (aB) provide that interference with the rights and duties of a landlord or tenant in terms of subs 4A and 4B is an offence punishable with a fine or imprisonment not exceeding two years or both.

• *Payment of a deposit*

The Amendment Act contains several detailed provisions dealing with deposits paid in terms of a lease. Under s 4B(1) a landlord may require a tenant to pay a deposit before moving into a dwelling, which must be deposited in an interest-bearing account. Section 4A(1) requires the landlord to issue a written receipt for all payments received from the tenant, including for payment of a deposit. Additionally the tenant is in terms of ss 4A(2) and 4B(2) entitled to request the landlord to provide him or her with written proof in respect of interest accrued on the deposit. Section 4A(3) requires that the deposit and interest accrued on it must be paid to the tenant within seven days of the expiration of the lease.

Section 4B(3) provides that reasonable cost incurred in repairing damage to the dwelling may be deducted from the deposit, but relevant receipts reflecting these costs must be made available to the tenant for inspection. Failure by a landlord to repay the deposit to the tenant is a criminal offence in terms of s 16(aB), which is punishable with a penalty or imprisonment not exceeding two years or both.

• *Inspection of the dwelling*

Subsection 4B(4) provides that before moving into the dwelling, the tenant and landlord must together determine the existence of any defects or damage to the property with a view to determining the landlord's responsibility to rectify them or to register the defects or damage. In order to determine damage to the dwelling, ss 4A(4) and 4B(5) provide that on the request of the landlord, and at least three days before the expiry of the lease, the tenant must make himself or herself available to conduct a joint inspection of the dwelling at a time convenient to both of them and subject to the tenant's right to privacy. The purpose of this inspection is to determine if any damage has been caused to the dwelling during the tenant's occupancy.

• *Payment of rent and other costs*

Section 4A(8) creates a payment duty by providing that the tenant is liable, on the due date, for rental and other costs agreed on in the lease. However, this subsection also provides that for costs other than those agreed to in the lease, the tenant is only liable on proof of factual expenditure by the landlord. The reason for the latter liability is not completely clear as the amended subs 5(6) (h) requires that a contract of lease must contain information on the amount of any charges payable in addition to rental. It also provides that all other charges must be identified in the lease.

• *Subletting*

Under subs 4A(9), a tenant may not sublet a dwelling without the consent of the landlord. However, the landlord may not unreasonably withhold consent.

• *Condition of the dwelling*

Subsection 4B(11) is a general clause setting out requirements regarding the condition of a dwelling by providing that a landlord has an obligation to provide the tenant with a dwelling that is in a 'habitable' condition. The definition of 'habitability' has been inserted in the Act and it provides that 'habitability' has a corresponding meaning. 'Habitability' refers to a dwelling being safe and suitable for living with specific reference to the following factors –

- adequate space;
- protection from the elements and other threats to health;
- physical safety of the tenant, the tenant's household and visitors; and
- a structurally sound building.

Non-compliance with the requirement of habitability is a criminal offence under s 16(aB), which provides that a person who fails to fulfil his or her obligations as landlord in terms of s 4B(11) respectively will be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both.

Provisions pertaining to leases

• *Writing*

Section 5 of the Act deals with provisions of the lease agreements and the agreements themselves. Subsection 5(1) has been replaced. This subsection now requires all leases not subject to the provisions of the Formalities in respect of Lease of Land Act 18 of 1969 to be reduced to writing, and the onus for doing so rests on the landlord. Subsection 16(a) of the Act has been amended to provide for a general offence. This subsection provides that a person who fails to comply with subs 5(1) will be guilty of an offence and be liable on conviction to a fine or imprisonment not exceeding two years, or to both such fine and such imprisonment. Therefore, a person who fails to reduce a lease to writing will be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding two years or to both such fine and such imprisonment.

• *Contents of a lease agreement*

Subsection 5(6) deals with information to be included in a lease and provides that all leases must include certain information, including –

- the names and addresses of the parties for the purposes of formal communication;
- a description of the dwelling;
- the amount of rental;
- reasonable escalation;
- the frequency of payment;
- the amount of deposits if any;
- the lease or notice period;
- information relating to the rights and obligations of the tenant and landlord as set out in subs 4A and 4B;
- information relating to any other obligations of the tenant and landlord; and
- information on the amount of any charges payable in addition to rental.

• *Standardised lease agreements*

The new subs 5(6A) provides for standardised lease agreements that will improve proactive compliance with the

Act by providing that the Minister of Human Settlements must develop a *pro forma* lease agreement in all 11 official languages, containing the minimum requirements set out in the Act.

• *List of defects*

The amended subs 5(7) provides that a list of defects must be attached as an annexure to the lease agreement.

Rental Housing Tribunal

Chapter 4 of the Act regulates all aspects of the Rental Housing Tribunal. In terms of the amended s 6, ch 4 applies to all provinces of South Africa.

In terms of the amended s 7, every MEC must, within the first financial year following the commencement of the Amendment Act, establish a Rental Housing Tribunal in the province.

Section 13 regulates complaints to the tribunal. Subsection 13(4)(c) has been amended in order to expand the tribunal's power in respect of orders. The amended subs 13(4)(c) provides that where an unfair practice exists, the tribunal may make any ruling that is just and fair to terminate any unfair practice, including, a ruling to discontinue, among others, but not limited to, overcrowding,

unacceptable living conditions, exploitative rentals or lack of maintenance.

In terms of subs 13(12A), the tribunal may of its own accord and at the request of one of its members or on application by any affected person, rescind or vary any of its rulings if the ruling was erroneously sought or was granted in the absence of the person affected by it.

General provisions

The general provisions of the Act are dealt with under ch 5 and includes among other things, the amended s 15, which empowers the minister to adopt regulations under the Act on, *inter alia*, unfair practices in terms of the Act and regulations related to the calculation method for escalation of rental amounts and the maximum rate of deposits that may be payable.

Section 17 has been amended to provide that the proceedings of a Rental Housing Tribunal, including appeal proceedings, may be brought under review of a High Court. Section 17A makes provision for appeals against the decisions of a tribunal. A person who feels aggrieved by a tribunal's decision may file an appeal against that decision of the tribunal with the MEC who must then se-

lect a panel of adjudicators to adjudicate the appeal.

Conclusion

The Amendment Act was published in 2014 and will come into operation on a date to be determined by the President in the *Government Gazette*. Any additional or amended obligations imposed on a landlord or tenant by the Amendment Act shall become effective six months from the date of commencement of the Amendment Act. The Amendment Act has significantly amended the statutory rights and obligations of landlords and tenants, rules related to inspections, deposits, the condition of a dwelling, and the contents of a lease contract, as well as the powers of the Rental Housing Tribunal.

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