

NHFC COMMENTS ON THE RENTAL HOUSING AMENDMENT BILL

Preamble

NHFC welcomes the opportunity to submit comments on the Rental Housing Amendment Bill No.43 of 2007. Seemingly, this latest amendment has already been delayed by some four years.

Our position

Internationally, rental accommodation has recently been increasing in stature. South Africa appears also to have followed this route. As it is fundamental to its mandate and business, NHFC is encouraged by this focus on rental tenure.

We note that, in the main, the Bill seeks to provide more clarity on certain issues conveyed in the principal piece of legislation, Act No.50 of 1999. Here, we refer, for example, to the definition of "unfair practice" [section 1(1)]; the removal of any ambiguity and interpretative latitude in relation to the term "visitor" [section 4(1)]; and, making clear that "the Rental Tribunal does not have jurisdiction to hear applications for eviction orders" [section 13(14)].

The Bill also appears to grant more powers to the Rental Tribunal in certain respects. We base this view on sections 4(3), 5 and 13(12)(c). We agree with the insertions.

Our single-most concern, however, pertains to the whole question of evictions. To this end, we are not convinced that the insertion of section 13(14) and the deletion of section 19 in its entirety will foster better compliance or help give practical effect to better landlord-tenant rights.

We remain of the opinion that notwithstanding the High Court judgments that scoped the eviction of renters under the Prevention of Illegal Eviction and Unlawful Occupation Act, deciding on the eviction or non-eviction of tenants should essentially be a competence of the Rental Tribunal. It is the Rental Tribunal that should deal with the evictions of renters whereas

PIE, through a revised / clarified definition of "illegal occupier", could continue dealing all other situations.

Our recommendations are, therefore, as follows:

1. Add in Chapter 2 a point 2(2)(e):

"Provide legal mechanisms to protect the rights of tenants and landlords against illegal actions by the other party by affording speedy means of redress"

2. Amend Chapter 3 paragraph (5)(d)(ii) to read:

"repossess rental housing property having first obtained **a ruling by the Tribunal or** an order of court; and"

3. Chapter 4 paragraph 13(4)(c) insert between (ii) and (iii):

"non-payment of just rentals as described and contracted to in a valid lease agreement"

4. Omit the proposed amendment to Section 13 being the insertion of:

"(11A) The Tribunal must refer any matter that related to eviction to a competent court"

The Bill, in its present form, enables MECs and local authorities to establish Rental Housing Tribunals. Though the Rental Housing Tribunal appears to have its ruling status elevated, this is just in nominal terms. In real terms, its functions and executions remain the same. In cases of defaults, if there is no amicable solution and agreement among the parties involved the matter is referred to a competent Court.

The Rental Housing Act is intended to be even-handed: it should protect both the landlord and tenant equally. If such protection for or exercising of a right by either party that is derived whether in this Act or elsewhere is delayed then the maxim of "justice delayed is justice denied" surely holds true.

Our considered view is that the Bill seeks to "over-protect" – even provide license - to delinquent tenants. This is clearly unfair to the landlord.

We refer here to the classification of the following as unlawful:

- (i) seizing of delinquent tenants' properties;

- (ii) lock-outs;
- (iii) switching off utilities;
- (iv) one month filling of vacancies (now extended to 3months)

The implications for this from a landlord perspective are gloomy. While the defaulting tenants are free to enjoy all the usual benefits and legal protection, the landlord tends to suffer financially. The current arrangement does not seem to remedy the already problematic non-payment ratio. This would have far reaching cash-flow consequences for landlords. Certainly, from NHFC's business point of view, this is paramount. We would have hoped that the Bill would address that gap by empowering the Rental Tribunals to resolve such conflicts swiftly and effectively.

A similar type of additional protection as landlords is required for Social Housing Institutions which are recipients of Restructuring Capital Grants and Provincial Subsidies (to protect government investment) as well as commercial investors in the rental housing market to enable them to protect their investments against illegal actions.

The primary recommendation is to build on the established powers of the Rental Tribunals and to provide them with the same powers as the Magistrate's Courts in matters relating to housing. Apart from being able to settle disputes speedily, it will free the Magistrate's Courts for more important issues as it is well known that the courts in general are overworked. On the issue of the rental boycott against Sohco Property Investments in Durban, for example, some of the cases have been dragging on since June 2009 putting enormous financial pressure on the company.

