Western Cape Government
Human Settlements
BETTER TOGETHER.

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COMMEMENTS ON RENTAL HOUSING AMENDMENT BILL [B56-2013]

We refer to the above and hereby submit collated comments on the Rental Housing Amendment Bill, 2013 [B56-2013] ("the Bill") and the Rental Housing Act, 1999 (Act 50 of 1999) ("the principal Act").

We request an opportunity to make a verbal presentation to the Committee as well.

1. The WCPRHT with one exception supports the amendments proposed by the abovementioned bill.
2. The exception referred to above concerns clause 17 of the bill.
3. Clause 17 proposes the insertion in the Act of an appeal process.
4. At the outset it must be pointed out that the phrase in clause 17A(2) –

   "The Minister must prescribe the circumstances under which an application for appeal maybe submitted, ..." gives rise to the question, does this mean there are circumstances in which there is no appeal? Without doubt, this situation is most undesirable.
5. The appointment of adjudicators clause 17A (3) is vague. How many adjudicators are to be appointed? What is the situation if the adjudicators having been appointed are not able to reach consensus?
6. The suspension of the Tribunal ruling (clause 17A (5) cannot be supported. Such a suspension leaves the parties in a limbo. Bear in mind that clause 17A (1) allows a party 21 days after receipt of a ruling to lodge an appeal. Stated bluntly, the envisaged appeal process (21 days to appeal and a 30 day suspension) is in direct conflict with the ideal of law to bring about speedy and finalised adjudication of disputes.

7. Experience has shown that relationships between landlords and tenants become very emotional, personalised and principled. In many instances the issue is not the sometimes small amounts of money involved, but the principle of who is right and who is wrong. An opportunity to appeal will aggravate situations such as the above.
8. The principal Act contains a very useful provision in that cases must be finalised within 90 days. An appeal process will further delay finality and certainty and many landlords and /or tenants will appeal just to frustrate the other party.
9. The Tribunal renders a service to the public very similar the Small Claims Court. In that forum there is no right of appeal.
10. An appeal process will further lead to increased expenses for the WCG in that:
    a. The adjudicators will have to ask the Tribunal for the reasons for its decision with the result that its Members would have to be paid for their extra time;
    b. Where the matter is returned back to the Tribunal, its Members will have to be remunerated for the extra time that they are spending, dealing with the matter.
11. The Tribunal has between 3 and 5 Members presiding over a matter. The chances of making a wrong decision, is therefore very small. The Chairperson of the Portfolio Committee has been quoted as saying that Tribunals are not perfect. That may be so, but that begs the question – which body is perfect? Examples are rife where parties in a Magistrate's Court case appeal to the High Court, then to the full Bench of the High Court and then to either the Appellate Division or the Constitutional Court. So where should this suggested right of Appeal stop?
12. Once this right has been given and it proves to be problematic, it will be very difficult to take away.
13. Experience has shown that the majority of complaints (90%) are from tenants who claim a refund of their deposits. From a study of the complainants in these cases it is also evident that the complainants are from the low income groups.
14. As far as we know, none of the Tribunals are complying with the 90 day requirement and adding an appeal opportunity will take matters taken on appeal to 6 months and longer. These complainants cannot afford that. This will be a classic case of Justice delayed is justice denied.

Sincerely

JJA Botha

CHAIR PERSON: RENTAL HOUSING TRIBUNAL

Date: 13 Dec 2013