



PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

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Public Comments on the Rental Housing Amendment Bill

06 December 2011

Submission	Clause/Section	Recommendation(s)/Proposal	Included	Not Included
Limpopo Provincial Government (Office of the Premier)	Section 1	<p>Line(2) Ensure Consistency throughout the Bill in the use of the word "principal" – either uppercase or small case the "p" from "principal"</p> <p>Line(4) Use a single closed non-bold inverted comma after "Minister"</p> <p>Line(7) Use single non-bold inverted comma after "prescribed"</p>		
	Section 2	Line (3) Un-bold the open inverted commas before "Application"		
Western Cape Provincial Government (Premier's Office)	Clause 2	<p>The Bill proposes that section 4(5)(d)(ii) of the Rental Housing Act, 1999 ("the principal Act) be amended to give a landlord the right to, on termination of a lease, repossess rental housing property after obtaining a ruling by the Tribunal or an order of court</p> <p>In our view, section 4(5)(d)(ii) of the principal Act and the proposed amendment is problematic, for the following reasons:</p> <ul style="list-style-type: none"> The provision implies that a landlord would not be able to regain possession/control of his/her rental housing property upon the 		



		<p>termination on a lease, without first obtaining a court order or Tribunal ruling, even if a tenant voluntarily vacates the rental housing property</p> <ul style="list-style-type: none"> The Tribunal interpreted the proposed amendment to this provision to imply that they (the Tribunal) would be able to deal with eviction matters. The insertion of the words “a ruling by the Tribunal” could therefore be regarded as being in direct conflict with clause 7 of the Bill and section 13(14) of the principal Act 		
NHFC	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”		
	Chapter 3	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		
Limpopo Provincial Government (Office of the Premier)	Section 3	Line(3) Un-bold the open inverted commas before “Establishment”		
	Section 4	The department should consider using the words “rescind or vary” as variation may make more sense in a situation as described in s 4(b) of the Bill.		
NHFC	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”		
Western Cape Provincial Government (Premier’s Office)	Section 4	The extension of the powers of Rental Housing Tribunal to rescind any of its rulings under certain circumstances is welcomed		
COMMISSION FOR GENDER EQUALITY	Section 4	<p>The CGE does not support the proposed amendment in its current form because it is ambiguous. The intention of the amendment is to protect the tenant against unlawful evictions and also allow for the landlord / tenant to approach a Rental Housing Tribunal for an order in respect of disputes relating to repossession. Unfortunately the proposed amendment is drafted in a manner which allows the landlord to repossess even where the order may prohibit repossession. Accordingly, the CGE proposes the following :</p> <p><u>“(ii) repossess rental housing property after having first obtained a ruling by the Tribunal or an order of court authorizing such repossession; and.”</u></p>		
	Section 7	This amendment is not supported in its current form because it does not set out any timeframes. A province may fail to give effect to this obligation and rely on the fact that no time frame has been provided. Furthermore, provinces may give effect to such a provision at leisure and this will translate to a situation where in some provinces the		



		<p>establishment of Rental Tribunals may be postponed indefinitely. Such circumstances amount to vertical discrimination and should be avoided. Accordingly the CGE proposes the following revision.</p> <p><u>Every MEC must by notice in the Gazette establish a tribunal in the Province to be known as the Rental Housing Tribunal within 6 (six) months of promulgation of this Act.</u></p>		
	Clause 5	<p>The Bill propose that section 9 of the principal Act be amended by the insertion of the following subsection after subsection (4):</p> <ul style="list-style-type: none"> “(4A) A person appointed in terms of subsection (4) may not serve for more than two consecutive terms”. <p>In the opinion of one Tribunal member, “this would be punitive to those who could be of enormous benefit to the Rental Tribunals, as there are few individuals who are expert in the various sectors expected of future members”.</p>		
	Section 5	<p>We propose that the word “its” be used instead of the word “their”, which is intended to replace the words “the area of such local authorities”.</p> <p>We propose that the term “local authority” be replaced with the term “municipality” wherever it is used in the Act and Bill and that it must be indicated which category/type of municipality is referred to in each instance.</p>		



		<p>Financial Implications:</p> <p>Paragraph 6.3 of the memorandum on the objects of the Bill (“the Memorandum”) provides that the Department will incur the costs associated with the implementation of the legislation</p> <p>We propose that the Department’s full name be indicated as the term “Department” has not been defined in the Act or the Bill.</p> <p>For the purpose of our comments, we assume that “the Department” refers to the National Department of Human Settlements.</p> <p>It is not clear how the Department intends to fund the establishment and operations of the Rental Housing Information Offices, which are to be established by municipalities and whether a regulatory impact assessment has been done to determine what the cost implications would be for the implementation of the legislation</p> <p>We propose that the memorandum clearly sets out the anticipated funding mechanism for both the establishment and operations of the proposed Rental Housing information Offices</p>		
Limpopo Provincial	Section 6	Line(5) Check closed inverted commas		



Government (Office of the Premier)				
	Long title Consequential amendments	Justification of Long title Consequential amendments to the long title and memorandum on objects if variation is provided for in s4 in addition to rescission		
Organisation of Civil Rights	Section 7	The Minister must in consultation with every MEC, by notice in the Gazette establish a tribunal in each province to be known as the Rental Housing Tribunal		
SALGA	Section 7	NDHS should fully capacitate provinces to effectively and efficiently manage RHTs, NDHS must regularly monitor and evaluate the performance of provinces to ensure that they fully comply with their legislative mandate to establish and manage effective and efficient RHTs; and Provinces must budget accordingly to ensure that RHTs are adequately resourced to perform their functions		
Western Cape Provincial Government (Premier's Office	Section 7	Proposes an amendment to section 13 of the principal Act by inserting the following subsection as subsection 10A: <ul style="list-style-type: none"> • (10A) The Tribunal must refer any matter that relates to evictions to a competent court 		
Commission for Gender Equality	Section 9	The CGE rejects the proposed amendment because it is not rationally connected to the purpose of ensuring that fairness,		



		<p>equity, community interests and accommodation needs are addressed by the Tribunal. Instead there is a predisposition to embrace property needs only. In addition to this, gender representation is completely ignored. Therefore, the CGE recommends the following :</p> <ul style="list-style-type: none"> (i) A Rental Housing Tribunal to be balanced in terms of gender representation. (ii) Two persons with legal qualifications to be appointed where one has to be a female. (iii) One individual nominated from the community (iv) Only one person who has expertise in property development or management. (v) One member having expertise in consumer matters (vi) The chairperson must have suitable qualifications as he or she will be expected to chair proceedings and hand down rulings. 		
	Section 14	<p>The CGE supports the proposed amendments but seeks to recommend that an extension to the jurisdiction of the Tribunal be considered which would include certain additional issues that are listed below.</p> <p>The CGE has received numerous complaints concerning rental</p>		



		<p>accommodation and the following issues were dominant :</p> <ul style="list-style-type: none"> (a) Lessors charge exorbitant deposits and contravene the law by not refunding same with interest upon termination of the lease. (b) The deposits levied vary from one month's rent to up to six months rent in other instances. (c) Key deposits are levied and when keys are replaced the cost of replacement is levied and the deposit is also forfeited. (d) The lessor uses the accommodation deposit to set - off maintenance costs arising from normal wear and tear which is unlawful. (e) Exploitative rentals are levied and annual increases exceed the cpi which makes the cost of renting unaffordable within a few years. <p>Therefore, in such instances the Tribunal should be able to adjudicate and make the requisite rulings instead of referring the matter to a competent body as contemplated in Section 13(4) (b) of the Act</p>		
<p>Organisation of Civil Rights</p>	<p>Section 13</p>	<p>The Rental Housing Tribunal should not be given powers to rescind its ruling. In fact, it cannot do so if its judgement is deemed to be a magistrate's court judgement. The</p>		



		seriousness of the RHT's ruling/judgement and the importance of its role will be undermined		
NHFC	Section13	<p>Omit the proposed amendment to section 13 being the insertion of: “(11A) The Tribunal must refer any matter that relate to eviction to a competent court”</p> <p>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 nominal terms. In real terms, its functions and executions remains the same. In case of defaults, if there is no amicable solution and agreement among the parties involved the matter is referred to a competent Court.</p> <p>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</p> <p>Our considered view is that the Bill seeks to “over-protect – even provide license – to delinquent tenants. This is clearly unfair to the landlord.</p> <p>We refer to the classification of the following as unlawful:</p>		



		<ul style="list-style-type: none"> (i) Seizing of delinquent tenants' properties (ii) Lock-outs; (iii) Switching off utilities (iv) One month filling of vacancies (now extended to 3 month) <p>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.</p>		
Commission for Gender Equality	Section 14	<p>The marketing of services and the jurisdiction of Rental Tribunals is important for effective service delivery. Therefore, it is necessary that an independent party must provide information on the services offered by Rental Tribunals. This is essential to ensure that among others disadvantaged people are made aware so that they are able to seek relief swiftly and informally at Rental Tribunals. Accordingly, all municipalities <u>must</u> be under a duty to set up a Rental Information Office in their area of jurisdiction. It should not be optional but compulsory for all municipalities to set up Rental Information Offices. In addition to this regulations should set out the qualifications, responsibilities and relationship that must exist between the Information Office and Tribunals.</p>		
SALGA	Section 14	<p>Section 14 of the principal Act must not be amended to make it obligatory for all municipalities to establish RHIOs. Provinces</p>		



		<p>must either deploy or appoint staff members to municipalities and fund the establishment and operational costs of RHIOs. Municipalities should only be responsible for the provision of office space; and</p> <p>Section 14 of the principal Act should only be amended to make it obligatory for municipalities that have been granted full level 3 accreditation by the MEC's to establish and manage RHIOs;</p>		
Breedevalley Municipality (Worcester)	Section 14	<ul style="list-style-type: none"> • This amendment in particular section 14, assumes that all Municipalities are the same (One size fits all); Category A;B; and C • This amendment assumes that the local authorities have unlimited resources to appoint officials; • There is no indication that the insertion of section 14 would strengthen the Housing Consumer Education 		
	Section 15	<p>It is proposed that section 15 of the principal Act be amended further to state that the Minister must also consult SALGA in addition to the relevant parliamentary committees and every MEC.</p> <p>Final suggestion: The NDHS must embark on an intensive capacity building programme for municipalities that are granted final level three accreditation;</p>		



		<p>and</p> <p>The NDHS must conduct research on the need for establishment of RHIOs per municipality category. The NDHS has not done any research whatsoever on the need for RHIOs in the different kinds of municipalities, nor any research on the feasibility of this initiative;</p>		
<p>Community Inputs on the RH Act</p>		<ul style="list-style-type: none"> • Arbitrary evictions – we seek a clear definition of the word/sentence • Co-operative housing – has been omitted from the list of other types of tenure • Responsibility to appoint the tribunal by Minister – if the mandate to draw up regulations shifts from the provincial MEC to the national Office, does it mean the department proposes a one size fits all type of regulations despite geographical and cultural dynamics of each province; • Clarity on the following: <ul style="list-style-type: none"> -proposed composition of the Tribunal board - competency to imposing penalties - the process of raising issues <p>Penalties to evict affected by the Tribunal (Magistrate) vs High Court process</p> • The measures in place to deal with the collusion of big business to fix the 		



		<p>rentals under the proposed market related pertaining to the Bill</p> <ul style="list-style-type: none">• The bill fails to address challenges experienced by students in and around various colleges where accommodation is an issue• The role of the Act and the tribunal to bridge a gap between locals and foreign nationals in the contestation of the property and accommodation		
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