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PUBLIC SUBMISSION

REPUBLIC OF SOUTH AFRICA

## **RENTAL HOUSING AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill published in Government Gazette No. 34703 of 28 October 2011)  
(The English text is the official text of the Bill)*

(MINISTER OF HUMAN SETTLEMENTS)

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I NaNandi (Nadja) Simone (Schafer) herewith wish to add public comment to the  
aforementioned amendment bill.

I make this submission of suggestions to the amendment both in my personal capacity and  
from personal experience in regard to the Rental Act as well as the Rental Tribunal, as well  
as in my professional capacity from the experiences of clients in regard to the rental Act and  
the Rental Tribunals.

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While I appreciate that this amendment is addressing specific sections only and which I will  
add comment to I wish to add that it is my opinion from my personal and my clients  
experiences in regard to the effectiveness of this act and the tribunal, that further  
amendments to the act need to be considered as well in order to ensure that the Act and in  
turn the Tribunal are effectively, fully and justly enforced. The current act in sections  
contradicts or clashes with the Constitution of our Land and/or with other acts as well. This  
leaves a wide corridor for abuse of the act often to the biased benefit of the landowner and  
to the prejudice of the tenant and or their rights. It is only the intellectual, the brave and the  
strong who hold or win against the abuse formed in this corridor, the rest easily are swept  
away in it to become even less than a statistic. (Almost none are available in this field)

In regard to this specific amendment as tables I wish to add the following comments

- a) The Rental Tribunal of each municipal area needs to be set up, equipped and managed relative to the size and area location of that municipal jurisdiction. From my experience the Rental Tribunal in Cape Town is understaffed, under qualified in many instances and severely overworked, directly impacting the quality and effectiveness of what is in theory a vital organization for the public.
- b) In larger municipal area's it might be wiser to establish satellite offices to address the issue raised in (a) above
- c) I applaud the amendment submission that the Tribunal should have the power to overrule its own ruling; however this needs to be done by a set appeal process and not addressed to the same people who issued the first ruling. Currently the Tribunal rulings have no recourse other than to submit a complaint to the MEC, which your average public will not know to do or have the ability to do. This fact allows for the tribunal to make rulings that are not necessarily just and correct and affords the current officers of the commission unilateral power and little transparency
- d) In addition to the above ( c) so as to avoid unfair, unqualified or unjust rulings a type of procedural requirements with a check list needs to be in place so as to ensure that by the time the matter is heard ALL aspects of the case have been investigated and addressed. Likewise the Commission must be well versed in the relevant Acts and ensure that they take into account ALL the relevant circumstances.
- e) It has been my experience that of the case officers are either under qualified to handle any cases that are outside the ambit of simple learnt rules or are stuck in a box and do not have the ability to think outside the box, both of which are the backbone of complaints brought to the Tribunal. The work the case officer does is vital to the process and needs to be deemed as such. Likewise the commission hearings appear at times to be satisfied with little or incorrect submission or paperwork or investigation by a case officer, causing the ruling to be biased or incorrect.
- f) The Tribunal will not continue to work on a matter where rent is in arrear, yet a court will and must hear a PIE matter taking into account ALL the relevant circumstances, and in spite of arrear or unpaid rental. Many cannot afford a good attorney and legal aid is does not always place the attention I feel it should on the cases, often due to their budget constraints, which is another matter entirely. The Tribunal should continue to assist a tenant even if there are arrears IF there is merit in the case to do so.

Why should the Tribunal not allow the same procedure as a magisterial court would in a PIE matter, as after all they both adhere to the same constitution and the same Act. Likewise the Commission must be well versed in the relevant Acts and ensure that they take into account ALL the relevant circumstances. A failing is that often Commissions and Magistrates rule pro land owner or without taking all the relevant circumstances into account or without due knowledge and experience in this section of law.

- g) There is then the obvious matter of the fact that the Constitution states that NO ONE should be left homeless or be evicted if ALL the relevant circumstances deem it not just to do so and then of course if an eviction would render someone homeless. And yet the evictions continue IN SPITE of these point and often where it was completely unjust and un equitable to do so. Just as the CPA hold the supplier of goods liable as well with the consumer so should the Rental act place more liability on the Land Owner to also have to "come to the Party" so to speak. Often in this "corridor" lies and manipulation are used to address the court and due to the ineptness of the tenant's ability or their representation, these situations are ruled in favour of and often another family is devastated and often debilitated by what in essence was injustice at one of its worst.

Admit ably where this is a Bond(s) in place and the rental income is required to cover a portion or the whole of the Bond it is for this reason that a land owner proceeds vigorously. However in reality the Land Owner is not really the land owner but the creditor to the Bank. And if the land owner bought the property for investment purposes and with the intention of rental income covering the Bond repayments, one would then need to consider the NCR here as well. Also one would need to consider that the Land Owner and or the Bank then agreed to take on this risk and must be prepared to understand that is, until the property is paid for in full, exactly what renting it out was a risk. The same applies for those land owners who register properties' in Trusts while actually running them privately and having the rental income paid directly to them.

While I agree and accept that there are often cases where a tenant is blatantly defying their agreement and they must be held accountable to this, the fact is it is not these tenants that need the amendments and the Act as much as the ones who genuinely and truly did not mean to default and often there are solutions available to bridge or assist them but are disregarded due to these options not being quick enough or of the profit margins required by land owners.

While investment and profits are a land owners right and due, when this is allowed to override a person's dignity and rights not to mention disregard the individuals as people and they become merely black and white "tenants" on paper, we have indeed become an imbalanced society where money means more than people.

Thanking You

A handwritten signature in dark ink, appearing to be 'NaNandi Simone', written in a cursive style.

NaNandi Simone

( Nadja Schafer)