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8 May 2012

Hon BN Dambuza, MP
The Chairperson
Portfolio Committee on Human Settlements
Parliament
CAPE TOWN

SHRA'S FURTHER PROPOSED AMENDMENTS TO THE WORKING DRAFT OF THE RENTAL HOUSING AMENDMENT BILL, BILL 21 OF 2011

In addition to the comments forwarded to your office on 8 May 2012, I make a humble appeal that the additional comments listed hereunder also be considered in the absence of SHRA representation. These comments came about from a discussion with the Chair of the SHRA Regulations Committee who also serves on the Gauteng Rental Tribunal.

- 1. Rental Escalations** - the escalation of rentals in the Act must make reference to State funded rentals landlords (Social Housing Institutions) and how they are regulated and give guidance on rental determinations in the sector. This will assist the Rental Tribunals to deal with such aspects in cases of disputes;
- 2. Section 5 (1) must read** "a lease between a tenant and a landlord must be in writing" - the proposed wording "need not" and "if requested to by a tenant" must be deleted. When a dispute arises it usually gets resolved much quicker if there is a written lease agreement in place. It is proposed that consultations be held with the Rental Tribunals on this as they are the one faced with the day to day practical challenges of oral lease agreements;
- 3. Composition of the Tribunal** - the Chairperson of the Tribunal must have a legal qualification and the necessary expertise and exposure to rental housing matters. If the Chairperson does not possess legal qualifications, there may be challenges for him/her making a decision on points of law. A Tribunal's orders or judgements are orders of the Magistrate Court and can only be reviewed. The Tribunal must be constituted by a majority of legally qualified members as the Tribunal is a court and not just a Board. The Tribunal has quasi-judicial functions to exercise and if the Tribunals are to have and maintain integrity and command respect at the level of a magistrate court, the decisions of the Tribunals must be legally accurate and defensible at any forum;

4. **Section 4(c)** - Where members already appointed at the time of commencement of the Rental Housing Amendment Act 2012, have already served two consecutive terms (save where they were appointed to replace members that have resigned during their term of office), the succession plan must provide for replacement of such members over an eighteen months period to ensure continuity;
5. Reference to a process of **submission to an appeal should not be considered** at all. The Rental Housing Tribunal should take the lessons learned from the CCMA which is a well-established Tribunal. All matters heard by the CCMA are subject to review by the Labour Court and there is no appeal process within the CCMA. Appeal process would stifle the Tribunal processes and allow for a lot of injustice to happen given that the members of the Tribunal are not necessarily legally qualified. Review process should remain intact and matters of the Rental Housing Tribunals be subject to review by the High Court. Rescission of rulings and dismissal of cases where parties fail to appear with no explanation before the Tribunal should be the powers which remain with the Tribunal. With the CCMA being a success story there is no reason to reinvent the wheel when it comes to Rental Housing Tribunals. Rental Tribunals have to learn from the CCMA;
6. There should be **no appeal process** within the Tribunal. It would not make sense for the Tribunal to hear its own appeals when its orders are orders of the Magistrate Court. Magistrate Court appeals are heard in the High Court and if appeals are to be allowed that are the route they should take as reviews already go to the High Court from the Rental Housing Tribunal. Matters from the Rental Housing Tribunals have gone as far as the SCA and the Constitutional Court recently and important views have been expressed by the Constitutional Court regarding the role of the Tribunals and its quite disturbing that the recommendations and the judgement has not been factored into the section of the Bill dealing with the Rental Tribunals;
7. Furthermore the Tribunal would not have the capacity to hear such appeals hearings given the numbers to be appointed by the MEC. The bottom line is that appeals and reviews should be heard by a higher court as the orders of the Tribunal are orders of the Magistrate court. Appeal in that sense can only go to a higher court. **Proposed Section 17 should be deleted in its entirety.**

Yours faithfully,



Brian Moholo
CHIEF EXECUTIVE OFFICER