

GAUTENG PROVINCE

DEPARTMENT OF HOUSING

RENTAL HOUSING ACT, 1999 (ACT NO. 50 OF 1999)

RENTAL HOUSING TRIBUNAL PROCEDURAL REGULATIONS, 2001

The Member of the Executive Council responsible for housing in the Province of Gauteng has under section 15 (1) of the Rental Housing Act, 1999 (Act No.50 1999) made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations, any expression that is defined in the Act has the same meaning, unless the context otherwise indicates, and-

“complainant” means a person who lodges a complaint with the Tribunal, and such a complaint falls within the jurisdiction of Tribunal;

“mediation” means a process in the in terms of which a Tribunal member, a member of staff, or a nominee of the Tribunal assists parties to resolved a dispute
;

“party” means a person who is participating in mediation or any other dispute resolution mechanism provided by the Tribunal;

“register” means the register contemplated in section13(8) of the Act;

“Respondent” means a person against whom a complaint has been lodged with the Tribunal;

“The Act” means the Rental Housing Act, 1999(Act No. of 1999); and

“Unfair practices regulations” means the unfair practices regulations made under section 15 (1) (f) of the Act.

Lodging complaints

2. (1) Complaints lodged with the Tribunal must be in writing and must be in the prescribed form appearing in Schedule 1 to the regulations

(2) Complaints must be lodged-

(a) By mail to the Office of the Tribunal;

(b) At the relevant Rental Housing Information Office within the jurisdiction of the local authority in which the dwelling is situated;

(c) At the office of the Tribunal; or

(d) By facsimile to the Office of the Tribunal, confirmation of successful transmission is proof of the complaint.

(3) A complaint is deemed to be lodged on the date upon which the Tribunal receives the complaint.

Jurisdiction

3. If a complaint is not within the jurisdiction of the Tribunal, as determined by the staff of the Tribunal, the Tribunal must-

(a) Notify the complainant writing within thirty (30) days of the receipt of the complaint that the Tribunal cannot act on the matter;

(b) advise the complainant that he or she may within thirty (30) days of the date of such notification make a request for the Tribunal to review the decision on jurisdiction;

(c) re-consider its decision on jurisdiction as soon as possible after receipt of a request contemplated in sub regulation (b) and notify the complainant in writing of the outcome thereof, and

- (d) Where possible be given a referral to the appropriate forum within thirty (30) days of the receipt of the complaint

Processing of complaints

- 4. The Tribunal must take the following steps in respect of any complaint lodged with it:
 - (a) Open a file
 - (b) Allocate a file reference number the complaint; and
 - (c) Provide an acknowledgement of receipt to the complainant containing the reference number.

Resolution of Disputes

- 5. (1) If the Tribunal determines that the complaint does not relate to a dispute in respect of a matter which may constitute an unfair practice or that no relief could be provided, the Tribunal must-
 - (a) notify the complainant in writing thirty (30) days, that the Tribunal will take no action ,
 - (b) if possible, furnish the complainant with a referral to the appropriate forum, and
 - (c) record the disposition and closure of the matter in the register.
- (2) The Tribunal must ensure that mediations and hearing are conducted in a language that all the parties concerned can comprehend and for this purpose, the Tribunal will provide the services of an interpreter, if necessary.

Mediation

- 6. (1) The mediation process must be conducted as follows –
 - (a) prior to the commencement of mediation proceedings the mediator must explain to the parties that the mediation process is confidential,
 - (b) the mediator must at the outset inform the parties that the mediator merely acts as a facilitator in trying to resolve the disputes between them and that the decision to be arrived at will be the decision of the parties and not that of the mediator;
 - (c) the mediator must inform the parties that –
 - (i) each party will be given an opportunity to state their case
 - (ii) each party can at any stage of the mediation recess into a caucus, in another room or office;
 - (iii) the mediator may with the consent of the parties attend a caucus and make suggestions and proposals; and
 - (iv) the mediator may convey any proposal, attitude or indication or suggestion stemming from a caucus to the other party;

- (d) the mediator must conduct mediation only in those disputes in which he or she can be impartial with respect to all of the parties and the subject matter of the disputes;
 - (e) the mediator must disclose to the parties actual or potential conflicts of interest and must not mediate in any such dispute between the parties;
 - (f) where a mediator is barred from mediating due to a conflict of interest, the mediator must suspend the mediation and request the Tribunal to appoint another mediator, upon which the Tribunal must as soon as practicable appoint a substituting mediator to continue with the mediation;
 - (g) if at any time the mediator is of the opinion that a party to mediation is unable to understand and participate fully in the mediation due to any reason, the mediator must suspend the mediation for not that thirty (30) days and at the same time recommend that the party concerned obtain appropriate assistance in order to continue with the mediation; and
 - (h) If the party fails to obtain assistance within the prescribed period as contemplated in sub regulation (1)(g) the mediation must be regarded as having failed.
- (2) The mediator must attempt to obtain testimony or documents voluntarily, which the mediator determines is necessary, from a person not party to the mediation and record in the file all efforts made to obtain the information.
- (3) The Tribunal may authorise a subpoena in the prescribed form contained in Schedule 2 where testimony or documents contemplated in sub regulation (2) cannot be obtained voluntarily.
- (4) Mediation must be completed within thirty (30) days from commencement thereof.
- (5) If mediation is not completed within the prescribed period of thirty (30) days, then the mediation may be extended, with the consent of the Tribunal, for a period not exceeding thirty (30) days. No further extension is possible and mediation must be regarded as having failed if it is not completed within the prescribed period or extended period.
- (6) The parties must not be coerced in any manner to reach agreement.
- (7) If the mediation results in an agreement it must be reduced to writing, and signed by all the parties and the mediator. Before requesting the parties to sign the agreement, the mediator must ensure that each party fully understands the agreement, is entering into it freely and voluntarily, and understands the effects of sections 13(12) and 12(13) of the Act.
- (8) If any of the parties request that the agreement must be made a ruling of the Tribunal, the mediator must submit the signed agreement to the Tribunal accompanied by such request. If the other party, or the majority of parties where there are more than two parties, agrees with the request, the Tribunal must grant request. If any other party opposes the request, the Tribunal must grant all parties the opportunity to make submissions to the Tribunal in support of their respective views. The Tribunal must consider the submission and decide to grant or refuse the request.
- (9) If no request as contemplated in sub regulation (8) is made, the mediator must submit the signed agreement to the staff of the Tribunal.

(10) If any party to a dispute, which was resolved by an agreement reached through mediation and that was not made a ruling of the Tribunal, alleges that the other party breached the agreement, that party may seek relief by reporting contemplated in sub regulation (10), the Tribunal must conduct an investigation into such allegations to determine whether the terms of the agreement are being adhered to, or not. If non-compliance is found to exist, the Tribunal must make the agreement a ruling of the Tribunal

Powers, duties and functions of inspectors and administrative staff

7. Inspectors appointed in terms of section 11 of the Act have the following powers, duties and functions-

- (a) conduct routine building inspections and provide written inspection reports when requested to do so by the Tribunal and staff members;
- (b) trace and contact property owners from information held by the Register OF Deeds or local authority;
- (c) consult with complainants and respondent and record all the information received;
- (d) obtain sworn statements from disputing parties and other parties concerned;
- (e) give evidence before the Tribunal when requested to do so;
- (f) obtain or examine copies of all books and documents, which may be relevant to a case;
- (g) contact any local authority to determine arrears in rates and taxes owned in respect of dwelling;
- (h) investigate the legal status of residents when illegal subletting is alleged to be occurring;
- (i) deliver notices and other documentation to the relevant parties involved in a disputes;
- (j) obtain from any Rental Housing Information Office established under the Act, any reports concerning inquiries and complaints received as contemplated under section 13(3)(a) of the Act;
- (l) provide any information and produce any report or documents concerning an inspection conducted, which may have bearing on a complaint;
- (m) serve subpoena-
 - (i) by handing a true copy to such person personally; or
 - (ii) by leaving a copy thereof at the place of residence or business of the said person with the person apparently in charge of the premises at the time of delivery, being a person apparently above the age of 16 years; or
 - (iii) by delivering a copy thereof at the place of employment of the said person to some person apparently above the age of 16 years and apparently in authority over him or her; or
 - (iv) in the case of a corporation or company, by delivering a copy to a responsible employees thereof at its registered office or its principal place of business, within the jurisdiction of the Tribunal, or where there is no such employees willing to accept service, by affixing a copy to the main door of such office or place of business; or

(v) where any partnership, firm or voluntary association is to be served, service must be effected in the manner referred to in paragraph (ii) at the place of business such partnership, firm or voluntary association.

(n) assist the Tribunal in conducting any preliminary inquiry to provide complete record; of relevant information acquired through inspections and investigations;

(o) deliver written recommendations of the Tribunal to a party against whom action will be taken for non-compliance with the Unfair Practices Regulations; and

(p) do anything in the reasonable execution of functions and duties required by these regulations, the Act or the Tribunal

(2) Administrative staff appointed in terms of section 11 of the section of the Act have the following powers, functions and duties-

(a) receive written complaints, open files and enter particulars of complaints in the register;

(b) review complaints and screen complaints in respect of the jurisdiction of the Tribunal and advise complainants accordingly in writing;

(c) conduct preliminary investigations;

(d) keep records about the status of complaints and the outcomes thereof;

(e) receive and carry out the instructions of the Tribunal and prepare the necessary documentation for the Tribunal;

(f) schedule mediation and Tribunal hearing and notify in writing;

(g) mechanically record proceedings in mediation and Tribunal hearings.

Failure to respond or refusal to participate

8. If a respondent who is alleged to have engaged in an unfair practices does not respond, within five (5) days, to inquiries by the staff of the Tribunal when the complaint is initially lodged or if the respondent refuses to participate in an effort to resolve the matter, the Tribunal may proceed to investigate and determine whether there has been a violation of the unfair practices regulations, and make a ruling which is just and fair in the circumstances.

General

9. Mediation proceeding and hearing of the Tribunal must be recorded mechanically

Short title

10. These regulations are called the Rental Housing Procedural Regulations, 2001.

GENERAL NOTICE

NOTICE 1472 OF 2002

DEPARTMENT OF HOUSING

**RENTAL HOUSING ACT, 1999
(ACT NO.50 OF 1999)**

FIRST AMENDMENT OF THE UNFAIR PRACTICES REGULATIONS, 2002

The Member of the Executive Council responsible for Housing in the Province of Gauteng has, under section 15(1)(f) of the Rental Housing Act, 1999(Act No. of 1999), made these unfair practice regulations in the Schedule.

SCHEDULE

Definitions

1. In the Schedule "the Regulations" means the Unfair Practices Regulations 2001 published under Government Notice No 4004 of 4 July 2001.

NOTE GENERAL EXPLANATORY:

[] Expressions in bold type in square brackets indicate omissions from existing regulations

Expressions underlined with a solid line indicate insertions in existing regulations.

Amendment of the Regulation 3 of the Regulations

- 2 Regulation 3 of the Regulations is hereby amended by

The insertion of the following sub regulations after sub regulation (3):

“(4) A lease between a tenant and a landlord need not be in writing or be subject to the provisions of the Formalities in Respect of Lease of Land Act, 1969 (Act No. 18 of 1969);

(5) A landlord must, if requested thereto by a tenant, reduce the lease to writing.

(6) A lease contemplated in sub regulation (5) must include the following information-

- (a) the names of a tenant and a landlord and their addresses for purposes of formal communication;
- (b) the description of the dwelling which is subject of the lease
- (c) the amount of rental to be paid in respect of the dwelling and reasonable escalation, if any, to be paid in terms of the lease;
- (d) if rental are not paid on a monthly basis, then the frequency of rental payments;
- (e) the amount of deposit ,if any;
- (f) the lease period, or, if there is no lease period determined, the notice period requested for termination, which period must not be less than one calendar month period.
- (g) obligations of a tenant and a landlord; and
- (h) any other charges payable in addition to the rental payable in respect of the dwelling.

(7) If a landlord requires a tenant, before moving into a dwelling, to pay deposit, the deposit must not exceed an amount equivalent to an amount specified in the agreement or otherwise agreed between the parties.

(8) the deposit contemplated in sub regulation (7) must be invested by a landlord in an interest-bearing account with a financial institution and a landlord must subject to sub regulation(12) pay a tenant interest at the rate applicable to a savings account with a financial institution, and a tenant may during the period of the request a landlord to provide him or her with a written proof in respect accrued on such deposit, and a landlord must provide such proof on request: Provided that where a landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), the deposit and any interest thereon must be dealt with in accordance with the provisions of that Act.

(9) A tenant and a landlord must jointly, before a tenant moves into a dwelling, inspect the dwelling to ascertain the existence or not of any defects or damage therein with a view to determining the landlord's responsibility for rectifying any defects or damage or with view registering such defects or damage.

(10) A list of defects or damage registered in terms of sub regulation (9) must be attached to the lease, if the lease has been reduced to writing.

(11) At the expiration of the lease, a landlord and a tenant must at a mutually convenient time, jointly inspect the dwelling to ascertain if there was any damage caused to the dwelling during a tenant's occupation thereof.

(12) At the expiration of the lease, landlord may apply such deposit and interest towards payment of all amounts for which a tenant is liable under the said lease, including the reasonable cost of repairing damage to the dwelling during lease period and the cost of replacing lost keys and the balance of the deposit and interest, if any, must then be refunded to a tenant by a landlord not later than 14 days of the restoration of the dwelling to a landlord.

(13) The relevant receipts which indicate the costs which a landlord incurred, as contemplated in sub regulation (12), must be available to a tenant for inspection as proof of costs incurred by a landlord.

(14) Should no amounts be due and owing to a landlord in terms of the lease, the deposit together with the accrued interest in respect thereof, must refunded to a tenant, without any deduction or set-off within 7 days of the expiration of the lease

(15) Failure by a landlord to inspect the dwelling in the presence of a tenant as contemplated in sub regulations (9) or (11) is deemed to be an acknowledgement by a landlord that the dwelling in a good and proper state of repair, and a landlord will have no further claim against a tenant who must be refunded, in terms of this sub regulation a full deposit plus interest by a landlord.

(16) Should a tenant fail to respond to a landlord's request for inspection as contemplated in sub regulation (11), a landlord must, on expiration of the lease, inspect the dwelling within 7 days from such expiration in order to assess any damages or loss which occurred during the tenancy.

(17) Should a landlord transfer title or cede interest in the lease, a landlord must transfer deposit together with the accrued interest for the of a tenant landlord's successor.

(18) If on the expiration of the a tenant remains in the dwelling with the express or tacit consent of a landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease."

Amendment of regulation 14 of the Regulations

2. Regulation 14 of the Regulation is hereby amended by the insertion of the following sub regulations after sub regulation (5):

(6) In advertising a dwelling for the purpose of leasing it, or in negotiating a lease with a prospective tenant, or during the term of a lease, a landlord must not unfairly discriminate against such prospective tenant or tenants, or the members of such tenants' household or bona fide visitors of such tenant, on one or more grounds, including race, religion, gender, sex, pregnancy, marital status, sexual orientation, ethnic, or social origin, colour, age, disability, conscience, belief, culture, language, social origin and birth.

(7) A tenant has a right, during the lease period, to privacy, and a tenant must only exercise right of inspection in a reasonable manner after reasonable notice to a tenant.

- (8) A tenant's right as against the landlord include not to have-
- (a) his or her person or home searched, except in terms of an order of court;
 - (b) his or her property searched, except in terms of an order
 - (c) his or her possession seized, except in terms of an order of court;

(9) The rights set out in sub regulation (7) apply to members of a tenant's household and to bona fide visitors of a tenant.

(10) A landlord's right against tenant include-

- (a) prompt and regular payment of rental or any charges that may be payable in terms of a lease;
- (b) recover unpaid rental or any other amount that is due and payable in terms of a lease;
- (c) terminate the lease in respect of a dwelling on grounds that do not detract from the regulations and are specified in the lease.
- (d) Claim compensation for damage to the dwelling, or any other improvements on the land on which the dwelling is situated, if any caused by a tenant; a member of tenant's household or a visitor of a tenant;
- (e) to receive the dwelling in good state of repair, save for fair wear and tear.
- (f) to repossess the dwelling having first obtained an order of court."

- (g) If the person is a company or other corporate entity, by handing a copy of the documents to a responsible employees of the company or body corporate at its registered office or its principal place of business within the Republic, or its main place of business within the magisterial district in which the dispute first arose or, if there is no employee willing to accept receipt, by affixing a copy of the document to the main door of the office or place business;
- (h) If the person is a tenant's or landlord's organisation, by handing a copy of the document to a responsible employee who at the time of service is apparently in charge of the organisation's office within the magisterial district in which the dispute first arose, at the office or, if there is no person willing to accept receipt, by affixing a copy of the document to the main door of that office;
- (i) If the person is a partnership; firm or association, by handing a copy of the document to a person who at the time of service or delivery is apparently in charge of the premises and is apparently at least 16 years of age, at the place of business of such partnership, firm or association or, if such partnership, firm, or association has no place of business, by serving a copy of the document on a partner, the owner of the firm, or the chairperson or secretary of the managing or other controlling body of the partnership, firm or association, as the case may be;
- (j) If the person is a municipality, by handing a copy of the document to the municipal manager, assistant municipal manager or any person acting on behalf of that person;

Short title

(17). These regulations are called the First Amendment of Unfair Practices Regulations, 2002.