
GENERAL NOTICES

NOTICE 340 OF 2008

DEPARTMENT OF HOUSING

RENTAL HOUSING ACT, 1999(ACT NO 50 OF 1999), AS AMENDED, PROCEDURAL AND UNFAIR PRACTICE REGULATIONS, 2008

The Department of Housing hereby publishes the draft Procedural and Unfair Practice Regulations, 2008, for public comment.

Interested persons and institutions are invited to submit written comments on the draft Regulations to the Director-General, Department of Housing, on or before 18 April 2008.

Comments should be submitted for the attention of –

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P.N..../2008

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RENTAL HOUSING ACT, 1999, (ACT NO 50 OF 1999)
PROCEDURAL REGULATIONS, 2008

The Minister of Housing has, in terms of section 15(1) (f) of the Rental Housing Act, 1999 (Act 50 of 1999), as amended, and in consultation with the select and portfolio committee and every MEC, made the regulations in the Schedule.

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1. Definitions

In these regulations, any word or expression to which a meaning has been assigned to it in the Rental Housing Act, 1999 (Act No. 50 of 1999) shall have the meaning so assigned to it and, unless the context indicates otherwise –

“complainant” means a person or persons who lodges a complaint with the Tribunal;

“mediation” means a voluntary process in terms of which parties are to resolve a dispute;

“party” means a person who is participating in a mediation or a hearing;

“register” means the register contemplated by section 13 (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 50 of 1999);

“Tribunal” means the Rental Housing Tribunal established in terms of section 7 of the Act;

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

2. Lodging of complaints

(1) Any tenant or landlord or group of tenants or group of landlords or other interest group may lodge a written complaint with the Tribunal concerning an alleged unfair practice as contemplated in the Act or as prescribed in terms of the Unfair Practices Regulations.

(2) If the complaint is lodged in a representative capacity, except if the representative is a practicing attorney, a letter or a petition signed by the complainant(s) authorising the representative to lodge a complaint, must be furnished to the Tribunal.

- (3) A complaint lodged with the Tribunal must be in writing and must be in the prescribed form appearing in (Annexure A) to these regulations and may –
- (a) be sent by registered mail or facsimile transmission to the office of the Tribunal;
 - (b) confirmation of a successful transmission of the facsimile will be proof of receipt of the complaint, or
 - (c) be delivered in person to the office of the Tribunal or at the relevant Rental Housing Information Office within the jurisdiction of the local authority in which the dwelling is situated.

3. Tribunal's responsibilities on receipt of complaint

- (1) The following steps must be taken in respect of any complaint received by the Tribunal:
- (a) A file must be opened and a reference number must be allocated to the complaint;
 - (b) file cover will reflect the name of the Tribunal, reference number of the case and names of the parties;
 - (c) The particulars of the dwelling to which the complaint refers must be listed in the register referred to in section 13 (8) of the Act;
 - (d) The complainant must be provided with an acknowledgement of receipt of the complaint which contains the reference number of the case;
 - (e) The Tribunal must conduct such preliminary investigations as may be necessary to determine whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice, and for this purpose any additional information required to provide a full and complete description of the matter may be obtained from either the complainant or the respondent;

- (f) If the Tribunal considers it necessary, it may instruct an inspector to first inspect the property and compile a report on the complaint;
- (g) The Tribunal must within 30 days of the receipt of the complaint, determine, as contemplated by section 13(2) (b) of the Act, whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice;
- (h) The determination contemplated by paragraph (g) must be recorded in the file referred to in paragraph (a).

4. Jurisdiction

- (1) If a complaint is not within the jurisdiction of the Tribunal, as determined by the Tribunal, the Tribunal must-
 - (a) notify the complainant in 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 (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

5. Requirements if no dispute exists

- (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, the Tribunal must –
 - (a) notify the complainant in writing of its decision;

- (b) if possible, furnish the complainant with an appropriate institution to which the matter should be referred, and
- (c) record that the matter has been disposed of and close the relevant file.

6. Procedure on determination that dispute exists

- (1) If the Tribunal has determined that a complaint does relate to a dispute in respect of a matter which may constitute an unfair practice, the Tribunal must –
 - (a) further determine, whether in its view, the dispute may be resolved by mediation or a hearing;
 - (b) call for further determination as contemplated by paragraph (a) to be recorded in the relevant file;
 - (c) if it has determined that the dispute may be resolved by mediation, appoint a mediator in terms of section 13 (2)(c) of the Act with a view to resolving the dispute, and in writing inform the parties to the dispute of the particulars of mediation (Annexure B);
 - (d) if it has determined that the dispute is of such a nature that it cannot be resolved by mediation, arrange for a formal hearing of the complaint, and, in writing, inform the parties of the particulars of the hearing; and
 - (e) If it has determined that a complaint does relate to a dispute in respect of a matter which may constitute an unfair practice, it will notify the respondent in writing, providing him or her the opportunity to examine the file and, if necessary, to provide the Tribunal with a written response thereto and / or lodge a counter claim within 21 days of receipt of the Tribunal's notification.
- (2) A complainant may withdraw his or her complaint in writing to the Tribunal within five days before the date of the mediation or hearing.

7. Mediation: Process and Procedure

- (1) If the Tribunal has appointed a mediator to resolve a dispute, the Tribunal must—
- (a) in writing inform the parties of the (Annexure B): -
 - (i) nature of the dispute;
 - (ii) particulars of the parties;
 - (iii) relevant information of mediation;
 - (iv) the date mediation is to be conducted;

 - (b) at least 10 days before the date of the mediation, a Notice of Mediation (Annexure B) be served on the complainant and respondent :-
 - (i) by handing a true copy thereof to the named person personally; or
 - (ii) by leaving such copy thereof at the place of residence or business of the said person with any person apparently in charge of the premises at the time of delivery, being a person apparently above the age of 18 years and apparently in authority over him or her; or
 - (iii) by delivering such copy thereof at the place of employment of the said named person to some person apparently above the age of 18 years and apparently in authority over him or her; or
 - (iv) in the case of a corporation, company or other body corporate or juristic person, by delivering such copy thereof to a responsible employee thereof at its registered or head office, or in the case of its principal place of business, within the jurisdiction of the Tribunal, or where there is no such employee 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 (iv) at the place of business of such partnership, firm or voluntary association;

- (c) ensure that a mediation is conducted in a language that all the parties concerned can comprehend and, for this purpose, the Tribunal must, if necessary, provide the services of a qualified interpreter.
 - (d) if the parties are unable to reach agreement, the mediator will issue a certificate as contemplated by section 13(2)(d) of the Act (Annexure C);
 - (e) if a party fails or refuses to attend mediation, after being duly notified, the mediator shall refer the matter to the Tribunal for a decision by completing the mediation certificate (Annexure C).
 - (f) If the mediation results in an agreement or is partly successful, the mediator will record the outcome in the mediation certificate (Annexure C).
- (2) The mediation process must be conducted as follows:
- (a) The mediator shall be impartial; must explain the mediation process, help and guide parties to arrive at a mutually acceptable solution;
 - (b) The mediator must explicitly discuss the issue of confidentiality with the parties prior to the commencement of any mediation. If a party requests that information be kept confidential either during the course of the mediation or afterwards, and the other parties agree to mediate under those terms, the explicit provisions of the confidentiality agreement must be made part of the mediation agreement (Annexure C);
 - (c) The mediator must at the outset inform the parties that the mediator acts only as a facilitator in trying to resolve the dispute between them, and that the final decision must be the decision of the parties and not that of the mediator.
 - (d) Parties do not take an oath or make affirmation because they do not give evidence.
 - (e) The mediator must also inform the parties involved that the mediation process will be conducted as follows:

- (i) Each party will be given an opportunity to present its case.
 - (ii) Each party may at any stage of the proceedings request a recess in order to caucus in another room or office.
 - (iii) If the other party does not have any objection thereto, then the mediator may attend the caucus meeting and make suggestions and proposals at the invitation of a party seeking the mediator's assistance.
 - (iv) If the party in a caucus does not have any objection thereto, then the mediator must convey to the other party, any proposal, attitude, indication or suggestion stemming from a caucus meeting.
- (f) The mediator must mediate only those disputes in which the mediator can be impartial with respect to all of the parties and the subject matter of the dispute.
- (g) At any time the mediator is of the opinion that any party to the mediation is unable to understand and participate fully in the proceedings due to mental impairment, emotional disturbance, intoxication, language barriers or other reasons, the mediator must –
- (i) limit the scope of the mediation, to a level consistent with the parties ability to participate;
 - (ii) make a recommendation that the party may obtain appropriate assistance in order to continue with the process, or
 - (iii) terminate, adjourn or postpone the mediation process.
- 3) The mediator may attempt to obtain information or documents, which are considered necessary, from a person who is not a party to the mediation, and such person should be requested to volunteer such information or documents to the mediator, who must record in the file all efforts to obtain the information or documents.

- (4) A mediation process must be completed within thirty (30) days from the date on which it commences. If this is not possible, then the process may be extended beyond the thirty (30) day period with the consent of the parties and the Tribunal.
 - (5) If the parties cannot reach agreement through mediation, the matter must be referred to the Tribunal for a formal hearing and ruling in terms of section 13 (3), (4), (5), (6) and (12) of the Act.
 - (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, including the mediator (Annexure C), and a copy of the signed agreement filed in the register.
 - (8) Should the mediation be partly successful, the mediator will record, with the consent of the parties, those issues upon which an agreement has been reached. In respect of all other areas in which there is no agreement, refer these to the Tribunal for a hearing by completing a mediation certificate (Annexure C).
 - (9) Before requesting the parties to sign the agreement the mediator must ensure that each party fully understands the agreement and is entering into it voluntarily.
 - (10) Copies of the signed agreement must be given to each party.
 - (11) The Tribunal may convert the signed mediation agreement into a ruling in terms of section 12(b) of the Act, which is deemed to be an order of a magistrate's court [s13(13)] in terms of the Magistrate's Court Act, 1944 (Act No. 32 of 1944).
 - (12) In the event the mediation has failed, the mediator being privy to the discussions through mediation shall not be part of the Tribunal hearing.
-

8. Hearing: Process and Procedure

- (1) The Tribunal is competent to hear a complaint and make such a ruling as it may consider just and fair in the circumstances, based on the provisions of the Act, facts of the case, relevant law and regulations:-
 - (a) where the dispute is of such a nature that it cannot be resolved through mediation;
or
 - (b) where a mediator has issued a certificate to the effect that the parties are unable to resolve the dispute through mediation;

- (2) Summoning of Parties to a Hearing
 - (a) The Tribunal through its staff members shall notify parties of the date, time and place of the hearing at least ten days prior to the hearing date.
 - (b) The staff of the Tribunal shall issue a summons (Annexure D) to be served upon the parties to the dispute, which summons will be served in terms of subregulation 8(1)(m).

- (3) Hearing Proceedings
 - (a) At least three Tribunal members shall preside at any hearing, one of whom shall be the chairperson or deputy chairperson, or another member appointed by the members present, to chair the proceedings;
 - (b) All hearings will be held in public, unless any of the parties successfully applies for a hearing to be held in camera;
 - (c) The Tribunal may call upon and administer an oath to, or accept an affirmation from, any person present at the hearing or who has been summoned to appear before the Tribunal;
 - (d) Parties will be informed of their rights, the procedure to be followed by the Tribunal, the effect of its rulings and the consequences of contravention thereof;
 - (e) Parties will be afforded the opportunity of stating their case, to cross examine, call witnesses and produce any relevant book, document, or object.

- (f) The rules of evidence will be observed and the members may, should the need arise, ask questions of the parties at any stage of the hearing proceedings;
- (4) Process to be followed by parties before a hearing-
- (a) If a Tribunal has determined that a complaint does relate to a dispute in respect of a matter which may constitute an unfair practice, it will notify the respondent in writing, providing him or her the opportunity to examine the file and, if necessary, to provide the Tribunal with a written response thereto and / or lodge a counter claim within 21 days of receipt of the Tribunal's notification and the Tribunal shall issue a hearing certificate: (Annexure E)
 - (b) Parties will exchange all relevant documents with each other, at least five days before the hearing;
 - (c) Parties will inform each other and provide details of witnesses they intend to use, at least five days before the hearing;
 - (d) Parties may meet before the hearing in an attempt to resolve the dispute, clarify issues or to agree on the exact nature of the complaints to be adjudicated.
- (5) General responsibilities of members-
- (a) Members in dealing with matters before the Tribunal, shall act and conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the Tribunal;
 - (b) Members shall be patient, dignified and courteous to the parties, representatives, witnesses and others before the Tribunal and shall require similar conduct of others;
 - (c) Members shall accord to every party to a proceeding, or to that party's representative, the right to be heard according to law.
 - (d) Members shall not initiate, permit or consider ex parte communications, unless required by the Act or regulations;
 - (e) Members shall not initiate, permit or consider communications with the public or parties that falls under the administrative responsibilities of the staff.

9. Spoliation and Interdicts Procedure

- (1) In terms of s 13 (12) (c) of the Act, a tenant or landlord may lodge a complaint on an urgent basis for spoliation or interdict.
- (2) The staff of the Tribunal shall conduct any preliminary inquiry and investigate the circumstances surrounding the complaint to ascertain the urgency thereof, and will advise the Tribunal accordingly.
- (3) The respondent will be served immediately with the Tribunal's interim ruling made, together with a copy of the complainant's statement.

10. Duties and functions of Tribunal Staff

- (1) In terms of section 11 of the Act, the staff employed by or seconded to the Tribunal, is the Tribunal staff and in terms of this regulations, their duties and responsibilities shall be determined by the Tribunal;
- (2) The Tribunal staff must perform the following functions: -
 - (a) Conduct routine building inspections and provide written inspection reports when requested to do so by the Tribunal.
 - (b) Trace and contact property owners from information held by the Registrar of Deeds.
 - (c) Hold consultations with complainants and respondents and record all the information received.
 - (d) Obtain relevant documents (e.g. lease contracts, receipts) and place such documents in the complainant's file;

- (e) Obtain sworn statements, if required, from disputing parties and other parties concerned.
 - (f) Give evidence before the Tribunal when requested to do so.
 - (g) Obtain or examine copies of all books and documents, which may be relevant to a case.
 - (h) Contact any local authority to determine the amount of arrears in rates and taxes owed in respect of a dwelling.
 - (i) Deliver notices and other documentation to the relevant parties involved in a dispute.
 - (j) Obtain copies of all receipts in respect of a dwelling, which is the subject of a complaint.
 - (k) Obtain from a Rental Housing Information Office established under the Act, any reports concerning enquiries and complaints received in terms of section 13(3)(a) of the Act.
 - (l) Provide any information and produce any report or other documents concerning an inspection conducted, which may have a bearing on any complaint.
 - (m) Serve a notice for mediation or summons on a party to a dispute or any other person who may reasonably be able to give information of material importance concerning a complainant, to appear before the Tribunal in terms of section (13)(3)(e) of the Act, and to produce any book or any other document as the Tribunal may require.
 - (n) Assist in conducting any preliminary inquiry to provide a complete record of all relevant information acquired as a result of inspections and investigations.
-

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- (o) Submit applications to a Magistrate's Court to prosecute when instructed by the Tribunal to do so.
 - (p) Deliver written recommendations of the Tribunal to parties against whom action will be taken for non-compliance with unfair practices regulations.
 - (q) Do anything in the reasonable execution of functions and duties required by the Act or the Tribunal.
 - (r) Receive written complaints, open files and enter the cases in the register.
 - (s) Review complaints and screen cases and advise complainants accordingly in writing.
 - (t) Conduct preliminary investigations.
 - (u) Keep records of the status of matters and their outcomes.
 - (v) Receive and carry out the instructions of the Tribunal and prepare the necessary documentation for the Tribunal.
 - (w) Schedule mediation hearings and notify parties about the place, date and time of such hearings in writing.
 - (x) Record proceedings of a mediation and hearing.
- (3) In terms of general responsibilities, the staff shall: -
- (a) observe the standards of impartiality, integrity and shall diligently discharge his or her administrative responsibilities without bias or prejudice, maintain professional competence and diligence in carrying out the administrative business of the Tribunal.
 - (b) refrain from manifesting bias or prejudice towards any person in the execution of his or her duties and responsibilities

11. General provisions

- (1) It shall be the responsibility of the Tribunal and its staff to collect, review, retain, take custody and store in chronological or numerical order or all information and of mediation and other proceedings and hearings, including recordings of hearings and transcript thereof when requested and where prepared, to make these available for all lawful purposes on written request;
- (2) Hearings of the Tribunal must be recorded and verbatim transcripts thereof shall, upon request by any lawfully interested person or party, be made available to such person or party at a reasonable time upon payment to the Tribunal of the actual costs of the preparation and production of such transcripts and any translation thereof;
- (3) All transcripts shall be made from the original recordings;
- (4) A landlord or tenant cannot lodge a complaint with the Tribunal if action was initiated in a magistrate's court or any other competent forum, unless the magistrate's court refers the matter to the Tribunal in terms of section 13(11) of the Act, and such referral is made in writing;
- (5) Correct details of parties must be lodged with the Tribunal, (e.g. the names as they appear on a written lease or in the instance of an oral lease, the names exchanged between the parties. If the landlord or tenant is a company that concluded the lease, the name of such company shall be deemed to be the landlord or tenant. The address for the service of documents and correspondence shall be the address as agreed between the parties);
- (6) A legal representative or agent shall not be cited as a landlord or tenant unless such persons or entities are the parties to a contract;
- (7) Any person or group which has an interest in public safety, health and security may lodge a complaint with the Tribunal specifying its interest;
- (8) Members may be referred to as Commissioners;

(9) All correspondence from the Tribunal shall be on the letterhead of the Tribunal.

12. Short title and Commencement

These regulations are called the Rental Housing Procedural Regulations, 2008.

Annexures**Annexure A complaint form**

a complaint lodged with the Tribunal must be in writing and must be in the prescribed form appearing in Annexure A to these regulations and may –

Annexure B notice of mediation

in writing inform the parties of the nature of the dispute, particulars of the parties and relevant information of mediation (Annexure B),

Annexure C mediation certificate

if the parties are unable to reach agreement during mediation, the mediator will issue a certificate as contemplated by section 13(2)(d) of the Act (Annexure C).

Annexure D summons and subpoena**Annexure E hearing certificate**

RENTAL HOUSING TRIBUNAL

Annexure A



FOR OFFICIAL USE



A. PARTICULARS OF COMPLAINANT

SURNAME:
FORENAME:
NAME OF ASSOCIATION (S):
ID NUMBER:
BUSINESS/RESIDENTIAL ADDRESS (FLAT NAME, ROOM NO. STREET NAME):
POSTAL ADDRESS:
BUSINESS TELEPHONE:
HOME TELEPHONE NO:
FAX NUMBER:

B. DETAILS OF DWELLING

NUMBER OF UNITS IN BUILDING (IF APPLICABLE):
NUMBER OF TENANTS LIVING IN THE DWELLING:
LOCATION OF DWELLING:

C. PARTICULARS OF LANDLORD/TENANT COMMITTEE MEMBERS

NAME: CONTACT NUMBER: DWELLING:
NAME: CONTACT NUMBER: DWELLING:
NAME: CONTACT NUMBER: DWELLING:
NAME: CONTACT NUMBER: DWELLING:
NAME: CONTACT NUMBER: DWELLING:
NAME: CONTACT NUMBER: DWELLING:
NAME: CONTACT NUMBER: DWELLING:

D. PARTICULARS OF PERSON AGAINST WHOM THE COMPLAINT IS LODGED

NAME OF LANDLORD/TENANT /ASSOCIATION: CONTACT NUMBER: FAX NUMBER: PERMANENT RESIDENTIAL ADDRESS (FLAT NAME, ROOM NO. STREET NAME) POSTAL ADDRESS (IF DIFFERENT)

E. ADDITIONAL INFORMATION

NAME OF CARETAKER:	
CONTACT NUMBER:	FAX NUMBER:
NAME OF OWNER OF BUILDING:	
CONTACT NUMBER:	FAX NUMBER:
PERMANENT RESIDENTIAL ADDRESS (FLAT NAME, ROOM NO. STREET NAME)	
POSTAL ADDRESS:	
NAME OF MANAGING AGENT:	
CONTACT NUMBER:	FAX NUMBER:
NAME OF BOND HOLDER:	
CONTACT NUMBER:	FAX NUMBER:

F. PERSON/ORGANISATION THAT REFERRED THE COMPLAINT

NAME:
TEL:
REF NUMBER:

G. LIST OF COMPLAINTS/DISPUTES

1.
2.
3.
4.

H. (FINANCIAL STATUS OF BUILDING)

TOTAL ELECTRICITY ARREARS	R
TOTAL WATER ARREARS	R
TOTAL RATES & TAXES OWED TO COUNCIL	R
TOTAL OWED TO THE MANAGEMENT AGENT	R

I. HAS A COMPLAINT FOR THIS BUILDING BEEN SUBMITTED BEFORE?
IF YES WHAT IS THE REFERENCE NUMBER.
YES _____
NO _____

J. IS THERE A NEED FOR INSPECTION?
YES _____
NO _____

LODGED BY : _____

SIGNATURE: _____

DATE: _____

FOR OFFICIAL USE

RECEIVED BY: _____
SIGNATURE: _____
DATE: _____

Annexure B

RENTAL HOUSING TRIBUNAL

CASE NO.RT.5209/07

In the matter between:

COMPLAINANT

AND

RESPONDENT

NOTICE OF MEDIATION

BE PLEASED TO TAKE NOTICE that the above matter has been set down for hearing at the Tribunal on the ----- day of ----- at -----

AND FURTHER TAKE NOTICE that the complainants of the complainant/s are as follows:

- 1. -----
- 2. -----

THE COMPLAINANT RESIDES AT:-----

PLEASE NOTE: that our address is: -----

THUS DONE AND SIGNED AT -----IN THIS ----- DAY OF ----- 2008.

SECRETARIAT: TRIBUNAL

Annexure C

MEDIATION CERTIFICATE							
Case Details							
Date		Complainant					
Venue		Respondent					
Case No.:		Mediator	initials	initials	initials	initials	initials
Outcome 1							
Mediation Succeeded		Mediation Succeeded in part		No Mediation			
Mediation Failed		Part-heard Mediation		No Jurisdiction			
Outcome 2							
Parties to Sign Agreement		Mediation Agreement Signed					
Outcome 3							
Complainant did not attend		No mandate by Complainant					
Respondent did not attend		No mandate by Respondent					
Action 1							
Referred for Hearing		Reschedule Mediation		Pending			
Action 2							
Close File – for one of the following reasons hereunder							
Party/s cannot be traced		Case Withdrawn by party/s		Mediation Succeeded			
Comments / Recommendations / Notes							

DATED AT
200

ON THIS DAY OF

MEDIAT

Annexure D

SUMMONS TO ATTEND A HEARING OF THE RENTAL HOUSING TRIBUNAL			
Address		Telephone	
Email:		Fax	
Case No	Place of Hearing	Date	Time / Tyd
Complainant		Respondent	
Property in dispute			
Dispute			

Name:**Address****Gender:**

You are required to appear in person before the said Tribunal on the said date in your own capacity in dispute and to remain in attendance until you have given evidence.

In the above mentioned complaint for the purpose of the hearing:

1. Bring with you any witnesses and produce at the hearing any books, papers or documents required by you as evidence.

NOTE: It is an offence in terms of Section 16 of the Rental Housing Act, 1999 and the Regulations promulgated there under not to comply with this Summons. If convicted you may be liable to a fine or to imprisonment, not exceeding two years or to both a fine and imprisonment.

DATED AT

ON THIS THE

DAY OF

20

TRIBUNAL MEMBER

(1) Consent to judgment:

To the Clerk of the Rental Housing Tribunal

I admit that I am liable to the Complainant as claimed in this summons (or in the amount of R and costs to date) and I consent to the ruling accordingly.

Dated at this day of 2008

Respondent

(2) Notice of intention to defend:

To the Clerk of the Rental Housing Tribunal

Kindly take notice that the respondent hereby notifies his / her intention to defend this action.

Dated at this day of 2008

Respondent / Respondents Representative

FOR OFFICIAL USE

I, the undersigned certify that I have served this Summons upon the within-named person by –

- *(a) delivering a true copy to him/her personally
- *(b) delivery as he/she could not be found, a true copy to

.....
 a person apparently above the age of 16 years and apparently residing or employed at the
 place of residence/employment/business

The nature, exigency and the consequences of this summons was explained to the recipient thereof.

Time..... Day..... Month

20.....

Place:

Signature of recipient:

Signature of Official:

Full name:

Full name:

RENTAL HOUSING TRIBUNAL

Annexure E

HEARING CERTIFICATE							
Case Details							
Date		Complainant					
Venue		Respondent					
Case No		Members	initials	initials	initials	initials	initials
Outcome	Hearing did not proceed						
	Part heard						
	Interim ruling:		interdict		spoliation		Other:
	Ruling made				Yes		No
	Reschedule						
Reasons	Did not attend:		Complainant		Respondent		
	No proper service on:		Complainant		Respondent		
	No jurisdiction		Other:				
Comments / Recommendations							

DATED AT

THIS

DAY OF

200

 Chairperson

 Member

 Member

P.N..../2008

..... 2008

RENTAL HOUSING ACT, 1999, ACT NO 50 OF 1999)
UNFAIR PRACTICES REGULATIONS

The Minister of Housing has, in terms of section 15(1)(f) of the Rental Housing Act, 1999 (Act 50 of 1999), as amended, and in consultation with the select and portfolio committee and every MEC, made the regulations in the Schedule.

SCHEDULE

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1. Definitions

In these regulations, any word or expression to which a meaning has been assigned to it in the Rental Housing Act, 1999 (Act No. 50 of 1999), as amended, shall have the meaning so assigned to it and, unless the context indicates otherwise –

“services” means the provision of water, electricity, gas services and refuse removal;

“the Act” means the Rental Housing Act;

“Tribunal” means the Rental Housing Tribunal established in terms of section 7 of the Act, and

“Unfair practice” means a failure to comply with these regulations constitutes an unfair practice contemplated in the definition thereof in section 1 of the Act.

2. Disclosure

- (a) Parties to a lease agreement (oral or written) must provide their full details in respect of payments, their names as they appears in the Identity Document, address for service of documents, telephone numbers and other contact details.
- (b) Where a representative negotiates and concludes a lease, details required in (a) above must be provided by the representative.

3. Leases

- (a) The rights and duties of a landlord and a tenant set out in these regulations apply to a landlord and a tenant even if the lease agreement between them has not been reduced to writing.
- (b) A landlord and a tenant may include in a lease agreement terms and conditions not prohibited by these regulations, the Act or any other law, including rent, term of the lease, and other provisions governing the rights and obligations of the parties.
- (c) A lease agreement must not include any provision which –

- (i) imposes a penalty for late payment of rent whether or not the penalty takes the form of administrative charge or any other form other than interest;
- (ii) excludes liability of either party for failing to comply with a duty under the lease, these regulations, the Act or any other law;
- (iii) limits or prevents either party from using the normal rights of recourse against the other because of the other's failure to comply with any duty under the lease, these regulations, the Act or any other law, unless provided for in these regulations, the Act or any other law; or
- (iv) precludes either party from being a member of a landlords' or tenants' association.

4. Effect of unsigned or undelivered lease agreement

- (a) If a landlord does not sign and deliver a written lease agreement, signed and delivered to the landlord by a tenant, acceptance of rent by landlord gives the lease agreement the same effect as if it had been signed and delivered by the landlord.
- (b) If a tenant does not sign and deliver a written lease agreement, signed and delivered to the tenant by the landlord, acceptance of possession of the dwelling and payment of rent gives the lease agreement the same effect as if it had been signed and delivered by the tenant.

5. Rentals

- (a) A tenant must pay rental due to the landlord under the lease.

- (b) Rent is payable without demand or notice at the time and place agreed upon and unless a tenant is otherwise notified in writing, rent is payable at the dwelling on the first day of each month.
- (c) A landlord must give a tenant at least 2 (two) months written notice of an intention to increase rental.

6. Conditions, Obligations and Maintenance

(1) A landlord must –

- (a) if the lease has been reduced to writing, stamp the lease and furnish the tenant with a copy thereof within 21(twenty one) days.
- (b) let a dwelling which at the commencement of the lease is in a condition -
 - (i) that is reasonably fit for human habitation; and
 - (ii) which does not contravene the provisions of these regulations, the Act or any other law;
- (c) keep and maintain the dwelling in accordance with these regulations, the Act or any other law;
- (d) take reasonable steps to ensure that the tenant enjoys undisturbed use of the dwelling and in a multi-tenanted building and that no tenant or other person conducts any activity within a dwelling which is expressly prohibited under these regulations, the Act or any other law, which shall include disturbance of the peace of the area;
- (e) formulate a set of house rules which must also take into consideration the interest of the neighbourhood with particular emphasis on preserving the peace;

- (f) maintain the common property, if any, in good order and repair;
- (g) maintain the outside of the dwelling, including the walls and roof in good order and repair;
- (h) maintain electrical, plumbing, sanitary, heating, ventilation, air conditioning systems and elevator system in good order and repair
- (i) repair any damage to the dwelling or common area caused by fair wear and tear;
- (j) provide and maintain appropriate container and places for the removal of ashes, garbage, rubbish, and other waste incidental to the dwelling and arrange for its removal;
- (k) provide all services agreed to in the lease;
- (l) effect repairs which a landlord is responsible for under the lease and as identified during inspections by the landlord or on receipt of a notice from a tenant to do such repairs, but a landlord is not liable for repairs if a tenant, his or her household members or visitors brought about the state of disrepair; and
- (m) effect repairs for which a landlord is responsible for, under the lease and as identified during inspections by the landlord or on receipt of a written notice from the tenant to do such repairs, within fourteen (14) days or such further periods as may be agreed to between the landlord and tenant.

(2) **A tenant must –**

- (a) use the dwelling in a proper manner and for the purpose for which it is let, and in a manner which does not contravene these regulations, the Act or any other law;
- (b) dispose from the dwelling all ashes, garbage, rubbish, and other waste in a reasonable clean and safe manner;
- (c) maintain the dwelling in a clean, tidy and safe state of repair;
- (d) use, in a reasonable manner, all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances including elevators on the premises;
- (e) refrain from intentionally or negligently damaging, defacing, impairing, or removing any part of the dwelling or common property or knowingly permitting any person to do so, who is on the premises with the tenant's permission or allowed access to the premises by the tenant and the tenant is liable for the repair of such damage, fair wear and tear excluded, at the tenant's own cost;
- (f) return the dwelling in the same condition as the tenant received it, fair wear and tear excluded;
- (g) during the period of lease be liable to maintain, replace or repair electrical globes, fittings and switches and also be liable for the maintenance, repair or making good all water-borne taps, stoves, locks, handles, and windows where such damage has not been due to natural causes;
- (h) maintain the garden, if any, and keep the same in a neat and tidy condition;

- (i) comply with the house-rules, which are enforceable pursuant to these regulations and must respect the peace of the area; and
- (j) maintain the swimming pool, including but not limited to, all pumps, hoses and accessories, in good order and repair, subject to fair wear and tear;

7. Reconstruction, refurbishment, conversion or demolition

- (1) A landlord may only-
 - (a) request a tenant to vacate the dwelling if any repairs, conversions or refurbishment are necessary and cannot be properly done while the tenant remains in occupation;
 - (b) cancel the lease and repossess the dwellings, without being liable for damages in terms of these lease, these regulations, the Act or any other law, in circumstances where the dwelling is in an uninhabitable condition.
- (2) In the circumstances referred to in paragraph (a) of sub regulation (1), the landlord must-
 - (a) allow the tenant remission of rental for the period during which the tenant is not in occupation;
 - (b) effect the repairs, conversion or refurbishment within a reasonable time so as to cause the tenant as little inconvenience as possible; and
 - (c) ensure that the tenant is able to return to the dwelling as soon as possible after the completion of the repairs; conversion or refurbishment.
- (3) where a landlord is required to make necessary repairs, conversions or refurbishment only to a part of the dwelling and a tenant continues to occupy the

remaining part, a tenant is entitled to a remission in rental, the amount of which is proportionate to actual from which a tenant has been deprived.

- (4) if a tenant, having been requested to vacate the dwelling, does not do so, a tenant has no claim against the landlord for injuries suffered while the dwelling is being repaired, converted or refurbished.

8. Eviction and Changing of Locks

- (a) A tenant must not be evicted from the dwelling without an order of court.
- (b) A tenant evicted from the whole or part of the dwelling by a third person has, subject to the common law, a claim for damages against the landlord.
- (c) A landlord or tenant must not change locks or doors providing access to the dwelling-
- (i) unless it is necessary to replace the locks or doors due to fair wear and tear or other reasonable causes
 - (ii) without reasonable notice of the proposed change to the other; and
 - (iii) unless duplicate keys are provided to the other immediately upon such change of locks.
- (d) If a tenant breaches the lease and in order to deprive the tenant access to a dwelling, the landlord must-
- (i) give the tenant seven (7) days notice in which to remedy the breach, unless the tenant is in default of rental payment and remains in default for a period of seven (7) days of due date, then such notice will be dispensed with; and
 - (ii) obtain a valid court order to evict the tenant.

9. Entry

- (1) A landlord may only enter a dwelling on reasonable notice to a tenant-
 - (a) to inspect the dwelling;
 - (b) to make repairs to the dwelling;
 - (c) to show the dwelling to a prospective tenant, purchaser, mortgagee or its agents;
 - (d) to inspect the dwelling for damages as referred to in section 5(3) (e) (f) of the Act or upon notification by the landlord or the tenant of the intention to terminate the lease;
 - (e) if the dwelling appears to be abandoned by the tenant; or
 - (f) pursuant to an order of court.
- (2) A tenant must allow a landlord to enter a dwelling for the purposes set out under sub regulation (1), but such entry must be carried out at reasonable time.

10. House Rules

- (1) A landlord must make house rules in relation to the control, management, administration, use and enjoyment of the dwelling.
- (2) A house rule is enforceable against a tenant only if-
 - (a) its purpose is to-

- (i) promote the convenience, safety, health, or welfare of the tenant in the premises and that of the neighbours;
 - (ii) preserve the landlord's property from abuse; or
 - (iii) make a fair distribution of services and facilities available to the tenant.
- (b) it is reasonably related to the purpose for which it is adopted;
 - (c) it applies to all tenants in the premises in a fair manner
 - (d) it is sufficiently explicit in its prohibition, direction, or limitation on the tenant's conduct and fairly informs the tenant of what is expected;
 - (e) it is not for the purpose of evading the obligations of the landlord; and
 - (f) the tenant has notice of the house rule at the time the tenant enters into the lease agreement.

11. Receipts

- (1) A landlord must furnish a tenant with a written receipt for all payments made by the tenant to the landlord, in the manner prescribed in section 5(3)(a) and (b) of the Act.
- (2) A landlord must furnish a receipt even where payments are made into his / her banking account and where a deposit slip exists as proof of payment or where any other method of payment is used as agreed upon by the tenant and landlord.

12. Municipal Services

- (1) A landlord who is obliged by law or in terms of the express or implied terms of the lease to provide water, electricity or gas services to a tenant, must-
- (a) provide such services;
 - (b) not cause the non-supply or interrupted supply of services to a dwelling without a court order, except –
 - (i) in an emergency; or-
 - (ii) after reasonable notice to the tenant to do maintenance, repairs or renovations, but the services must be resumed as soon as reasonably possible after such emergency, maintenance, repairs or renovations;
 - (c) ensure that the tenant is not exposed to the risk of interruption or loss of service provider when such a payment become due, if the tenant has made payment to the landlord in respect of the amounts due for such services;
 - (d) charge the tenant the exact amount for services consumed in the dwelling if such dwelling is separately metered; and
 - (e) comply with any law or obligation regarding the amount to be charged to the tenant for services, if any dwelling is not separately metered for services;
 - (f) in a multi-tenanted building not recover collectively, from the tenants for services provided in excess of the amounts totally charged by the utility service provider and the landlord; or

- (g) must without requesting payment of any fee be obliged to provide the tenant with copies of the account of the aforesaid service provider and copies of accounts rendered to the tenants with regard to such services;
- (2) If a dwelling is separately metered for services and payment must be made directly to a landlord, the landlord must provide a tenant with a monthly statement which must contain the following information-
- (a) the names of both the landlord and the tenant, as well as the physical address of the dwelling;
 - (b) the name, address and telephone number of each service provider;
 - (c) the previous and current month's meter readings;
 - (d) the actual consumption for each service and amounts charged therefore;
 - (e) the total payment due;
 - (f) the date of the next meter reading for each service; and
 - (g) the amount of any arrears.

13. General provisions

- (1) A landlord must not-
- (a) intimidate, discriminate or retaliate against a tenant for exercising any right under these regulations, the Act or any other law;
 - (b) preclude the tenant from establishing or being a member of any tenants committee or any similar body;

- (c) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or sent by the tenant;
 - (d) engage in oppressive or unreasonable conduct;
 - (e) fail to comply with the Tribunal complaint procedures or any agreement concluded with the Tribunal or with the tenant through the Tribunal's complaint procedures;
 - (f) conduct any activity which unreasonably interferes with or limits the rights of the tenant or which is expressly prohibited under the lease, these regulations, the Act or any other law; and
 - (g) induce a person to waive that person's rights under these regulations, the Act or any other law, or to withdraw from proceedings before the Tribunal.
- (2) A tenant must not-
- (a) cede the tenant's rights, assign the tenant's obligations or sublet the dwelling or any other part thereof to any other person without the written consent of the landlord, which in the case of subletting must not be unreasonably withheld;
 - (b) allow more than the maximum number of persons specified by the landlord to reside in the dwelling;
 - (c) intimidate, discriminate or retaliate against the landlord for exercising any right under these regulations, the Act or any other law;
 - (d) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or sent by the landlord;
 - (e) engage in oppressive or unreasonable conduct;

- (f) fail to comply with the Tribunal complaint procedures or any agreement concluded with the Tribunal or with the landlord through the Tribunal's complaint procedures;
 - (g) conduct any activity which unreasonably interferes with or limits the rights of the tenant or which is expressly prohibited under the lease, these regulations, the Act or any other law; and
 - (h) cause or permit any nuisance upon the dwelling and neighbouring properties; and
 - (i) induce a person to waive that person's rights under these regulations, the Act or any other law, or to withdraw from proceedings before the Tribunal
- (3) Every obligation under these regulations, the Act, or any other law and every act which must be performed as a condition precedent to the exercise of a right or remedy, imposes an obligation of good faith in its performance or enforcement.
- (4) The Tribunal is entitled to serve any document, notice or process upon a person collecting or receiving rent for or on behalf of a landlord.

14. Offences and Penalties

Should the landlord or tenant fail to comply with any provision of the Act or the Regulation or a ruling of the Tribunal, and found guilty, a fine may be imposed or imprisonment not exceeding two years or to both such fine and such imprisonment.

15. Short title

These regulations are called the Unfair Practices Regulations, 2008.