

REPUBLIC OF SOUTH AFRICA

RENTAL HOUSING AMENDMENT BILL

(As presented by the Portfolio Committee on Human Settlements (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF HUMAN SETTLEMENTS)

[B 21B—2011]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Rental Housing Act, 1999, so as to substitute and insert certain definitions; to fully stipulate the duties of Government; to set out the rights and obligations of tenants and landlords in a coherent manner; to require leases to be in writing; to extend the application of Chapter 4 to all provinces; to require MEC's to establish Rental Housing Tribunals; to extend the powers of the Rental Housing Tribunals; to provide for an appeal process; to require all local municipalities to have Rental Housing Information Offices; to provide for norms and standards related to rental housing; to extend offences; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 50 of 1999

1. Section 1 of the Rental Housing Act, 1999 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion before the definition of “dwelling” of the following definition:

“**‘arbitrary eviction’** refers to depriving a tenant of occupation of a dwelling, without an order of court made after considering all the relevant circumstances;”;

(b) by the insertion after the definition of “financial institution” of the following definition:

“**‘habitability’** refers to a dwelling that is safe and suitable for living in, and includes—

- (a) adequate space;
 - (b) protection from the elements and other threats to health;
 - (c) physical safety of the tenant, the tenant's household and visitors; and
 - (d) a structurally sound building,
- and “habitable” has a corresponding meaning;”;

- (c) by the substitution for the definition of “head of department” of the following definition:
 “**‘head of department’** means the officer in charge of a department of the provincial government responsible for **[housing] human settlements** in the province;”;
- (d) by the insertion after the definition of “lease” of the following definitions:
 “**‘local municipality’** means a municipality as defined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
 ‘maintenance’ refers to such repairs and upkeep as may be required to ensure that a dwelling’s habitability does not constitute an unfair practice, and “maintain” has a corresponding meaning;”;
- (e) by the substitution for the definition of “Minister” of the following definition:
 “**‘Minister’** means the Minister of **[Housing] Human Settlements**;”;
 and
- (f) by the substitution for the definition of “prescribed” of the following definition:
 “**‘prescribed’** means prescribed by regulation **[by the MEC, by notice in the Gazette]** in terms of section 15;”.

Amendment of section 2 of Act 50 of 1999

2. Section 2 of the principal Act is hereby amended—
- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (c), the insertion of the word “and” at the end of paragraph (d) and the addition of the following paragraph:
 “(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.”; and
- (b) by the addition after subsection (4) of the following subsections:
 “(5) The Minister must—
 (a) monitor and assess —
 (i) the impact of the application of this Act on landlords and tenants, and more specifically the impact on poor and vulnerable tenants; and
 (ii) the performance of Tribunals and Rental Housing Information Offices;
 (b) develop such relief measures and other social programmes as part of the policy framework on rental housing referred to in subsection (3), as he or she deems necessary to alleviate hardships that may be suffered by tenants;
 (c) develop programmes, directives and guidelines or amend or augment the policy framework on rental housing referred to in subsection (3), in such a manner as he or she sees fit, to facilitate effective performance by Tribunals and Rental Housing Information Offices; and
 (d) annually report to the National Assembly on the promotion of rental housing property envisaged in this section and section 3 as well as on the implementation of the Act.
 (6) For purposes of subsection (5), the Minister may define criteria based on age, income or another form or degree of vulnerability that apply to such tenants or group of tenants, and amend or augment the policy framework on rental housing referred to in subsection (3), in such a manner as he or she sees fit.”.

Amendment of section 3 of Act 50 of 1999

3. Section 3 of the principal Act is hereby amended by the addition after subsection (4) of the following subsections:
 “(5) National Government must develop and set aside budget to fund programmes to train members of the Tribunals and officials appointed in terms of section 14(2).
 (6) Provincial Government must financially assist local municipalities not yet on level three accreditation in establishing Rental Housing Information Offices as contemplated in section 14.”.

Amendment of Chapter 3 of Act 50 of 1999

4. Chapter 3 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“[RELATIONS BETWEEN] RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS”.

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Amendment of section 4 of Act 50 of 1999, as amended by section 2 of Act 43 of 2007

5. Section 4 of the principal Act is hereby amended by the deletion of subsections (2), (3), (4) and (5).

Insertion of sections 4A and 4B in Act 50 of 1999

6. The following sections are hereby inserted in the principal Act, after section 4: 10

“Rights and obligations of tenants

4A. (1) Tenants have the right to receive a written receipt from the landlord for all payments received by the landlord from the tenant, which receipt must —

- (a) be dated; 15
- (b) clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made;
- (c) indicate whether payment has been made for rental, arrears, deposit or otherwise; and 20
- (d) specify the period for which payment is made.

(2) Tenants may request the landlord during the period of the lease to provide him or her with written proof in respect of interest accrued on the deposit paid.

(3) On the expiration of the lease, tenants have the right to receive payment of the deposit and interest without any deduction or set-off, within seven days of expiration of the lease: Provided that where the tenant — 25

- (a) is liable to the landlord for any amounts under the said lease, including the reasonable cost of repairing damage to the dwelling during the lease period and the cost of replacing lost keys, the landlord may deduct such amounts and refund the balance of the deposit and interest to the tenant not later than 14 days from restoration of the dwelling to the landlord; or 30
- (b) fails to make himself or herself available for an inspection contemplated in subsection (6), the landlord may deduct any amounts to recover any damages or loss which occurred during the tenancy and refund the balance of the deposit and interest to the tenant not later than 21 days from restoration of the dwelling to the landlord. 35

(4) Tenants have the right to inspect the relevant receipts which indicate costs which the landlord incurred, as contemplated in subsection (3), as proof of such costs incurred by the landlord. 40

(5) Tenants have a right, in the presence of the landlord and before the tenant moves into the dwelling, to have the dwelling inspected to—

- (a) determine the landlord’s responsibility for rectifying any defects or damage; and 45
- (b) register any defects or damage, as provided for in section 5(7).

(6) Three days or less before the expiration of a lease the tenant must make himself or herself available to conduct a joint inspection of the dwelling at a time convenient to the landlord and the tenant, with a view to ascertaining if any damage was caused to the dwelling during the tenant’s occupation thereof: Provided that— 50

- (a) failure by the landlord to inspect the dwelling in the presence of the tenant as contemplated in this subsection is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair, and the landlord will have no further claim against the tenant; or 55

- (b) failure by the tenant to respond to the landlord's request for an inspection as contemplated in this subsection, will result in the landlord conducting an inspection without the tenant's presence, after which the landlord may deduct any damages or loss which occurred during the tenancy, as contemplated in subsection (3)(b). 5
- (7) A tenant has the right, during the lease period, to privacy, and should the landlord wish to exercise his or her right of inspection, the inspection must be done in a reasonable manner after reasonable notice to the tenant.
- (8) Tenants' rights against the landlord include his or her right not to have— 10
- (a) his or her person or dwelling searched;
 - (b) his or her property searched;
 - (c) his or her possessions seized, except in terms of a law of general application and having first obtained a ruling by a Tribunal or an order of court; or 15
 - (d) the privacy of his or her communications infringed.
- (9) The rights set out in subsection (8) apply equally to members of the tenant's household and to visitors of the tenant.
- (10) Tenants are liable for rental and other costs agreed on in the lease upon the due date. 20

Rights and obligations of landlords

- 4B.** (1) A landlord may require a tenant, before moving into the dwelling, to pay a deposit which—
- (a) may not exceed an amount equivalent to an amount specified in the lease agreement; 25
 - (b) must—
 - (i) be invested by the landlord in an interest-bearing account with a financial institution: Provided that the rate applicable to such account may not be less than the rate applicable to a savings account with that financial institution; or 30
 - (ii) where the lease agreement applies to a vulnerable tenant or the deposit is less than the prescribed amount, be dealt with as determined by the Minister by the regulation.
 - (c) must, subject to subsection (3) or (6), be repaid to the tenant with such interest at the rate applicable to such account on the expiration of the lease as contemplated in subsection (3) or (6); and 35
 - (d) shall, together with any interest accrued to it, not form part of the assets of the insolvent or deceased estate of the landlord in the event of the insolvency or death of the landlord. 40
- (2) Upon request from the tenant during the period of the lease, the landlord must provide him or her with written proof of interest accrued on the deposit referred to in subsection (1): Provided that where the 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 shall be dealt with in accordance with the provisions of that Act. 45
- (3) On the expiration of the lease, the landlord—
- (a) must, where no amounts are due and owing to the landlord in terms of the lease, refund the deposit together with the accrued interest in respect thereof, to the tenant, without any deduction or set-off, within seven days of expiration of the lease; 50
 - (b) may apply such deposit and interest towards the payment of all amounts for which the tenant is liable under the said lease, including reasonable cost of repairing damage to the dwelling during the lease period and the cost of replacing lost keys, and the balance of the deposit and interest, if any, must be refunded to the tenant by the landlord not later than 14 days of restoration of the dwelling to the landlord; and 55
 - (c) must make available to the tenant for inspection the relevant receipts which indicate costs which the landlord incurred as contemplated in paragraph (b) as proof of such costs incurred by the landlord. 60

(4) The tenant and the landlord must jointly, before the tenant moves into the 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 a view to registering such defects or damage, as provided for in section 5(7).

(5) Three days or less before the expiration of the lease the landlord and tenant must arrange a joint inspection of the dwelling at a mutually convenient time to ascertain if any damage was caused to the dwelling during the tenant's occupation thereof: Provided that—

(a) failure by the landlord to inspect the dwelling in the presence of the tenant as contemplated in this subsection is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair, and the landlord will have no further claim against the tenant, who must be refunded the full deposit plus interest by the landlord as contemplated in subsection (3)(a); or

(b) should the tenant fail to respond to the landlord's request for an inspection as contemplated in this subsection, the landlord must inspect the dwelling within seven days from expiration of the lease in order to assess any damages or loss which occurred during the tenancy.

(6) The landlord, in the circumstances contemplated in subsection (5)(b), without detracting from any other right or remedy of the landlord—

(a) may deduct from the tenant's deposit and interest the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys;

(b) must refund the balance of the deposit and interest, if any, after deduction of the amounts contemplated in paragraph (a), to the tenant not later than 21 days after expiration of the lease; and

(c) must make available the relevant receipts which indicate costs which the landlord incurred, as contemplated in paragraph (a), to the tenant for inspection as proof of such costs incurred by the landlord.

(7) Should the tenant vacate the dwelling before expiration of the lease, without notice to the landlord, the lease is deemed to have expired on the date that the landlord established that the tenant had vacated the dwelling, but in such event the landlord retains all his or her rights arising from the tenant's breach of the lease.

(8) A landlord may inspect the dwelling during the course of the lease, but in doing so must respect the tenant's right to privacy during the lease period and may only exercise his or her right of inspection in a reasonable manner after giving reasonable notice to the tenant.

(9) A landlord's rights against a tenant include the right to—

(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 where the tenant fails or refuses to make payment on demand, after obtaining a ruling by the Tribunal or an order of a court of law;

(c) terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;

(d) on termination of a lease—

(i) have the tenant vacate the rental housing property immediately upon expiration of the lease and to receive the rental housing property in a good state of repair, save for fair wear and tear; and

(ii) where the tenant fails or refuses to vacate the dwelling, evict the tenant from the rental housing property, after having obtained an order of court; and

(e) claim compensation for damage to the rental housing property and damage to any other improvements on the land on which the dwelling is situated, if any, caused by the tenant, a member of the tenant's household or a visitor of the tenant.

(10) Landlords must ensure that the provisions of sections 5(6), (7) and (8) regarding the lease are complied with.

(11) A landlord must provide a tenant with a dwelling that is in a habitable condition, as well as maintain the existing structure of the

dwelling and where possible facilitate the provision of utilities to the dwelling.”.

Amendment of section 5 of Act 50 of 1999, as amended by section 3 of Act 43 of 2007

7. Section 5 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 5

“(1) The landlord must reduce the **[A]** lease entered into between himself or herself and a tenant **[and a landlord, subject to subsection (2), need not be in]** to writing **[or]**: Provided that the lease will not be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 of 1969).”;
 - (b) by the substitution for subsection (2) of the following subsection: 10

“(2) **[A landlord must, if requested thereto by a tenant, reduce the]** The lease **[to writing]** must contain the information set out in subsection (6).”;
 - (c) by the substitution for subsection (3) of the following subsection: 15

“(3) A lease will be enforceable in a Tribunal or a competent court, and will be deemed to include the rights and obligations of tenants and landlords referred to in sections 4A and 4B, whether or not specifically incorporated.”;
 - (d) by the substitution in subsection (6) for paragraph (b) of the following paragraph: 20

“(b) the description of the dwelling which is the subject of the lease: Provided that a street address will be sufficient;”;
 - (e) by the insertion in subsection (6) after paragraph (f) of the following paragraph: 25

“(fA) a reference relating to the rights and obligations of the tenant and the landlord as set out in sections 4A and 4B;”;
 - (f) by the substitution in subsection (6) for paragraph (g) of the following paragraph: 30

“(g) any other obligations of the tenant and the landlord **[, which must not detract from the provisions of subsection (3)]** not set out in sections 4A, 4B or the regulations relating to unfair practice;”;
 - (g) by the substitution in subsection (6) for paragraph (h) of the following paragraph: 35

“(h) the amount of **[the rental, and]** any other charges payable in addition to the rental in respect of the rental housing property, which other charges must be identified in the lease agreement.”;
 - (h) by the insertion of the following subsection after subsection (6): 40

“(6A) The Minister must develop a pro-forma lease agreement, in all 11 official languages, containing the minimum requirements set out in this Act, which may be used as a guideline by the tenants and the landlords.”;
 - (i) by the substitution for subsection (7) of the following subsection: 45

“(7) A list of defects registered in terms of **[subsection (3)(e)]** sections 4A(5) and 4B(4) must be attached as an annexure to the lease **[as contemplated in subsection (2)]**.”; and
 - (j) by the deletion of subsection (9).

Substitution of section 6 of Act 50 of 1999

8. The following section is hereby substituted for section 6 of the principal Act:

“Application of Chapter

6. This Chapter applies to all provinces in the Republic of South Africa. 50

Substitution of section 7 of Act 50 of 1999

9. The following section is hereby substituted for section 7 of the principal Act:

“Establishment of Rental Housing Tribunals

7. ~~[The]~~ Every MEC ~~[may]~~ must within the first financial year following the commencement of the Rental Housing Amendment Act, 2012, by notice in the *Gazette* establish a tribunal in the Province to be known as the Rental Housing Tribunal.”. 5

Amendment of section 9 of Act 50 of 1999 as amended by section 4 of Act 43 of 2007

10. Section 9 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading: 10

“**[Composition]** Membership of Tribunal”;

(b) by the substitution for subsection (1) of the following subsection:

“(1) The Tribunal consists of **[not less than three and not more than five]** ~~four or seven~~ members, who are fit and proper persons appointed by the MEC, and must comprise— 15

(a) a chairperson, who is suitably qualified and has the necessary expertise and exposure to rental housing matters;

(b) **[not less than two and not more than four]** ~~three or six~~ members, of whom—

(i) **[at least one and not more than two]** ~~one in respect of three members and two in respect of six members~~ shall be persons with expertise in rental housing property management or housing development matters; **[and]** 20

(ii) **[at least one and not more than two]** ~~one in respect of three members and two in respect of six members~~ shall be persons with expertise in consumer matters pertaining to rental housing or housing development matters~~[,] and~~ 25

(iii) ~~one in respect of three members and two in respect of six members~~ shall be persons with legal qualifications and legal expertise.”; 30

(c) by the insertion after subsection (1A) of the following subsections:

“(1B) The members of the Tribunal must be broadly representative in terms of gender, race and disability.

(1C) The Tribunal may function as two committees, each with three members with the expertise set out in subsection (1)(b)(i), (ii) and (iii) respectively and with one committee being chaired by the chairperson and the other by the deputy chairperson.”; 35

(d) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 40

“(b) the MEC has consulted with the relevant standing or portfolio committee of the Provincial Legislature which is responsible for **[housing]** human settlements matters in the province.”;

(e) by the substitution for subsection (3) of the following subsection: 45

“(3) The MEC may appoint **[two]** up to six persons to serve as alternate members of the Tribunal in the absence of any member referred to in paragraph (b) of subsection (1), but such persons must have the relevant expertise contemplated in paragraph (b)(i), (ii) and (iii) of subsection (1) respectively and must serve as alternate for a member with similar expertise.”; 50
and

(f) by the insertion after subsection (4) of the following subsections:

“(4A) A person appointed in terms of subsection (4) may not serve for more than two consecutive terms. 55

(4B) Succession plans must be adopted and must provide for replacement of members in such a manner that, for the sake of continuity, all members are not replaced at once.

(4C) Members already appointed at the time of commencement of the Rental Housing Amendment Act, 2012, and who have already served two consecutive terms may be reappointed for an additional term of not more than 18 months to ensure continuity.”

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Amendment of section 10 of Act 50 of 1999, as amended by section 5 of Act 43 of 2007

11. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The Tribunal [**will sit**] must meet on such days and during such hours and at such place as the chairperson of the Tribunal may determine after consultation with other members of the Tribunal.”;
- (b) by the insertion after subsection (1) of the following subsection:

“(1A) The Tribunal may, subject to subsection (5), arrange two separate but simultaneous meetings of its two committees for purposes of effective functioning.”; and
- (c) by the substitution for subsection (5) of the following subsection:

“(5) The quorum of any meeting of the Tribunal is three members, of which [**at least two members**] one must be a member appointed in terms of section 9(1)(b)[(i) and (ii), **respectively**](iii).”

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Amendment of section 13 of Act 50 of 1999, as amended by section 6 of Act 43 of 2007

12. Section 13 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4)(c) for the words preceding subparagraph (i) of the following words:

“make any other ruling that is just and fair to terminate any unfair practice, including, without detracting from the generality of the foregoing, a ruling to discontinue amongst others, but not limited to—”;
- (b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) prevailing economic conditions [**of supply and demand**];”;
- (c) by the substitution for subsection (11) of the following subsection:

“(11) The Tribunal must, within 30 days of receipt of a complaint, refer any matter that relates to evictions to a competent court.”;
- (d) by the deletion in subsection (12) of the word “and” at the end of paragraph (b) and the insertion in that subsection of the following paragraphs:

“(d) subject to subsection (5), make a ruling to compel payment of rent as described and contracted to in a lease, and arrear rentals; and
 (e) in respect of any matter over which it has jurisdiction, make any order that is necessary to give effect to this Act.”; and
- (e) by the insertion after subsection (12) of the following subsections:

“(12A) The Tribunal may on its own accord and at the request of one of its members or on application by any affected person, rescind or vary any of its rulings if such rulings—

 - (a) were erroneously sought or granted in the absence of the person affected by it;
 - (b) contain an ambiguity or patent error or omission, but only to the extent of clarifying that ambiguity or correcting that error or omission; or
 - (c) were granted as a result of a mistake common to all parties to the proceedings.

(12B) The Tribunal may act on its own accord when supplementing or amending accessory or consequential matters, including—

 - (a) costs orders;
 - (b) altering an order for costs where it was made without hearing the parties;
 - (c) interest on ruling debts;

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- (d) clarification of a ruling so as to give effect to the Tribunal's true intention; and
 - (e) correcting clerical, arithmetical or other errors in its ruling:
- Provided that any substantive change to a ruling must be made within 14 days of the ruling being made.

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(12C) An application for rescission or variation must be brought within 14 days of the ruling being received by the affected person.”.

Amendment of section 14 of Act 50 of 1999

13. Section 14 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 10

“(1) **[A]** Every local **[authority]** municipality **[may]** must establish a Rental Housing Information Office to advise tenants and landlords **[in]** with regard to their rights and obligations in relation to dwellings **[the area of such local authority's their]** within its area of jurisdiction~~[.]~~: Provided that local municipalities may combine the functions of the Rental Housing Information Office with an existing office.”; and 15
- (b) by the substitution for subsection (2) of the following subsection:

“(2) **[A]** Every local **[authority]** municipality may, subject to the laws governing the appointment of local government officials, appoint or designate officials to carry out any duties pertaining to such Rental 20 Housing Information Office.”.

Amendment of section 15 of Act 50 of 1999, as amended by section 7 of Act 43 of 2007

14. Section 15 of the principal Act is hereby amended —

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25

“Subject to subsection (3), [The] the Minister [must] may make regulations, after consultation with the [standing or portfolio on housing] relevant parliamentary committees and every MEC, by notice in the Gazette, [make regulations] relating to—”; 30
- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) anything which may or must be prescribed under **[Chapter 4]** this Act”; 35
- (c) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 35

“(b) the procedures and manner in which the proceedings of the Tribunal must be conducted, including circumstances and process for submitting an appeal”; 40
- (d) by the insertion in subsection (1)(f) of the word “and” at the end of subparagraph (xv); 40
- (e) by the deletion in subsection (1)(f) of the word “or” at the end of subparagraph (xvi);
- (f) by the insertion in subsection (1) after paragraph (f) of the following paragraphs: 45

“(fA) norms and standards that are aligned to the policy framework set out in section 2(3), in relation to—

 - (i) terms and conditions of the lease, specifically in relation to fairness and protection of the parties;
 - (ii) safety, health and hygiene; 50
 - (iii) basic living conditions, including access to basic amenities;
 - (iv) size;
 - (v) overcrowding; and
 - (vi) affordability:

Provided that such norms and standards may be set per geographical 55 area to avoid unfair practices particular to that area;

(fB) the calculation method for escalation of rental amounts and the maximum rate of deposits in rental housing options provided by social housing institutions or other delivery agents and funded by

- public funds as contemplated in the Social Housing Act, 2008 (Act 16 of 2008);
- (fC) the offences referred to in section 16; and”; and
- (g) by the insertion after subsection (2) of the following subsection:
- “(3) The Minister must issue regulations as contemplated in subsection (1)(b), (f) and (fA) within 12 months of the commencement of the Rental Housing Amendment Act, 2012.”.

Amendment of Chapters 4 and 5 of Act 50 of 1999

15. Chapters 4 and 5 of the principal Act are hereby amended by deleting section 15 from Chapter 4 and inserting it under Chapter 5 before section 16.

Amendment of section 16 of Act 50 of 1999, as amended by section 8 of Act 43 of 2007

16. Section 16 of the principal Act is hereby amended—
- (a) by the substitution for paragraph (a) of the following paragraph:
- “(a) fails to comply with sections 4 or [5(2) or (9)] 5(1);”;
- (b) by the insertion after paragraph (a) of the following paragraphs:
- “(aA) wilfully or in a grossly negligent manner interferes with the rights of the tenant and landlord set out in section 4A(1), (3), (7), (8) and (9) and section 4B(8), (9)(b), (9)(c) and (9)(d)(i);
- (aB) wilfully or grossly negligently fails to fulfil his or her obligations as landlord in terms of section 4B(1)(c) and (11), respectively;”; and
- (c) by the substitution for paragraph (g) of the following paragraph:
- “(g) fails to comply with any ruling of the Tribunal [in terms of section 13 (4)];”.

Substitution of section 17 of Act 50 of 1999

17. The following section is hereby substituted for section 17 of the principal Act:

“Review

17. Without prejudice to the constitutional right of any person to gain access to a court of law, the proceedings of a Tribunal, including an appeal in terms of section 17A, may be brought under review before the High Court within its area of jurisdiction.”.

Insertion of section 17A in Act 50 of 1999

18. The following section is hereby inserted in the principal Act after section 17:

“Appeals

- 17A.** (1) Any person who feels aggrieved by the decision of the Tribunal may, in writing and within 21 days of receipt of the decision, file an appeal against that decision with the secretariat of the Tribunal appointed in terms of section 11(1).
- (2) The Minister must prescribe the circumstances under which an application for appeal may be submitted, including the procedure for filing and hearing of an appeal.
- (3) The secretariat must appoint a panel of adjudicators who possess legal qualifications and expertise in rental housing matters or consumer matters that relates to rental housing matters.
- (4) When appeals are lodged in terms of this section, the secretariat must within one day of receipt of the appeal, select one or two adjudicators from the panel on a rotation basis to consider the appeals and must so refer the appeals for hearing.
- (5) When an appeal has been lodged, the operation and execution of the order in question shall be suspended, pending the outcome of the appeal.

(6) The appeal must be finalised within 30 days of referral by the secretariat.

(7) The adjudicators may refer the matter back to the Tribunal, or confirm, set aside or amend the decision.".

Substitution of expression in Act 50 of 1999

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19. The principal Act is hereby amended by the substitution for the expression "local authority", wherever it occurs, of the expression "local municipality".

Transitional provisions

20. Any additional or amended obligations imposed upon a landlord or tenant by the Rental Housing Amendment Act, 2012, shall become effective 12 months from the date of commencement of the Rental Housing Amendment Act, 2012. 10

Short title and commencement

21. This Act is called the Rental Housing Amendment Act, 2012, and comes into operation on a date determined by the President by Proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE RENTAL HOUSING AMENDMENT BILL

1. BACKGROUND

- 1.1. Since the promulgation of the Rental Housing Amendment Act, 2007 (Act No. 43 of 2007), on 13 May 2008, the Department of Human Settlements (the Department) undertook a monitoring and implementation process with regard to the Act. Various areas of concern were identified and, given the importance of the rental housing sector in contributing to the attainment of the objectives of the Department, had to be addressed.
- 1.2. The Department's policy framework must be strengthened so as to make provision for the needs of the vulnerable, whilst balancing the constitutional rights of both tenant and landlord.
- 1.3. The rights and obligations of tenants and landlords must accordingly be clearly demarcated in rental housing legislation so as to enable these parties to know and understand their rights and obligations. Proof of rights and obligations must be available and to this end it is necessary that lease agreements be in writing.
- 1.4. It was identified that there is a need for every province to establish Rental Housing Tribunals and for municipalities to establish Rental Housing Information Offices. All provinces and municipalities are faced with similar rental housing challenges, whether formal or backyard. It was evident from the monitoring and implementation process that not all provinces have established Rental Housing Tribunals. Some of the provinces have only recently established Rental Housing Tribunals, and only after intervention by the Department. These Tribunals must be strengthened in their authority and functions to ensure that they offer an effective service.
- 1.5. Courts are perceived as being costly and time-consuming. Tribunals have been created by the Rental Housing Act, but only the relief of review of procedures have been provided for. Tribunals are not flawless and it is necessary to provide for a fast and cost-effective method to appeal against a decision of a Tribunal.
- 1.6. It is a global phenomenon that rental stock can be used to abuse the vulnerable, especially where the negotiation power of landlord and tenant is unequal. The Housing Act, 1997 (Act No 107 of 1997), provide for norms and standards to be developed in respect of housing development, but these focus on social housing development. The Rental Housing Act, 1999 (Act No. 50 of 1999) (the principal Act), also provides for norms and standards to be developed, but the provision in subsection 2(3) is linked to policy only and no guidance is provided in this regard. It is necessary that norms and standards be developed for the rental housing sector in such a manner that it does not interfere with the landlord's expectations to receive a reasonable return on his or her investment, but provides protection, especially for vulnerable tenants.
- 1.7. In view of the above, the Bill seeks to amend sections 2 and 3 of the principal Act to specify the obligations of the Executive, sections 4 and 5 to address the rights and obligations of tenants and landlords, sections 7, 9, 10, 13 and 16 in order to render the establishment of Rental Housing Tribunals in every province mandatory and provide for a strengthening of the composition and authority of these Tribunals, section 14 in order to render the establishment of Rental Housing Information Offices in every municipality mandatory, and to insert section 17A to provide for an appeal procedure.

2. OBJECTS OF BILL

The objects of the Bill are therefore to—

- 2.1. substitute and insert certain definitions;
- 2.2. fully stipulate the duties of Government;
- 2.3. set out the rights and obligations of tenants and landlords in a coherent manner;
- 2.4. require leases to be in writing;
- 2.5. extend the application of Chapter 4 to all provinces;
- 2.6. require MECs to establish Rental Housing Tribunals;
- 2.7. extend the powers of Rental Housing Tribunals;
- 2.8. provide for an appeal process;
- 2.9. require all local municipalities to have Rental Housing Information Offices;
- 2.10. provide for norms and standards related to rental housing; and
- 2.11. make further provision for offences.

3. PERSONS OR BODIES CONSULTED

Representations were requested from the Heads of Legal Services in the provincial departments and from the various Rental Housing Tribunals. Written and verbal presentations were received in this regard.

4. IMPLICATIONS FOR PROVINCES

It will be obligatory for each province to establish a fully operational Rental Housing Tribunal and Rental Housing Information Offices.

5. FINANCIAL IMPLICATIONS FOR STATE

- 5.1. The costs involved for the establishment and operations of the provincial Rental Housing Tribunals will be incurred by the provincial departments of Human Settlements. However, in this regard, it should be mentioned that all the provinces already have partly or fully operational Rental Housing Tribunals.
- 5.2. Rental Housing Information Offices need not result in any additional cost to a municipality, as provision is made for an employee to be designated as Rental Housing Information Officer. Training of such an employee will be conducted by the Department.
- 5.3. The Department will incur the costs associated with the implementation of the legislation. The Department will furthermore incur the cost for the publication of the Bill for public comments, information sessions, translations and other incidental costs. The said costs will be defrayed from the Department's budget.

6. PARLIAMENTARY PROCEDURE

- 6.1. The State Law Advisers and the Department are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it

falls within a functional area listed in Schedule 4 to the said Constitution, namely “Housing”.

- 6.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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