

REPUBLIC OF SOUTH AFRICA

RENTAL HOUSING AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76);
explanatory summary of Bill published in Government Gazette No. 30022 of 6 July 2007)
(The English text is the official text of the Bill)*

(MINISTER OF HOUSING)

[B 30—2007]

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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 a definition; to make further provision for rulings by Rental Housing Tribunals; to expand the provisions pertaining to leases; and to extend the period allowed for the filling of vacancies in Rental Housing Tribunals; 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 by the substitution for the definition of “unfair practice” of the following definition: 5

“ ‘unfair practice’ means—

- (a) any act or omission by a landlord or tenant in contravention of this Act; or
- (b) a practice prescribed as a practice unreasonably prejudicing the rights or interests of a tenant or a landlord.” 10

Amendment of section 4 of Act 50 of 1999

2. Section 4 of the principal Act is hereby amended—

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

“(1) In advertising a dwelling for purposes of leasing it, or in negotiating a lease with a prospective tenant, or during the term of a lease, a landlord may not unfairly discriminate against such prospective tenant or tenants, or the members of such tenant’s household or the *[bona fide]* visitors of such tenant, on one or more grounds, including race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth.”; 15 20

- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(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”; and 25

- (c) by the substitution for subsection (4) of the following subsection:
 “(4) The rights set out in subsection (3) apply equally to members of the tenant’s household and to *[bona fide]* visitors of the tenant.”.

Amendment of section 5 of Act 50 of 1999

3. Section 5 of the principal Act is hereby amended— 5
- (a) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 10
- “(b) such receipt must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made, and whether payment has been made for rental, arrears, deposit or otherwise, and specify the period for which payment is made: Provided that a Tribunal may, in exceptional cases, and on application by a landlord, exempt the landlord from providing the information contemplated in this paragraph;”;
- (b) by the substitution in subsection (3)(d) for the words preceding the proviso of the following words: 15
- “the deposit contemplated in paragraph (c) must be invested by the landlord in an interest-bearing account with a financial institution and the landlord must subject to paragraph (g) pay the tenant such interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with [a] that financial institution, and the tenant may during the period of the lease request the landlord to provide him or her with written proof in respect of interest accrued on such deposit, and the landlord must provide such proof on request”; and 20
- (c) by the deletion in subsection (3) of the word “and” at the end of paragraph (n), the addition of the word “and” at the end of paragraph (o) and the addition to that subsection of the following paragraph: 25
- “(p) any costs in relation to contract fees shall only be payable by the tenant upon proof of factual expenditure by the landlord.”.

Amendment of section 9 of Act 50 of 1999

4. Section 9 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1) of paragraph (c);
- (b) by the insertion after subsection (1) of the following subsection: 35
- “(1A) The MEC must appoint a deputy chairperson from the members referred to in subsection (1)(b).”; and
- (c) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
- “(a) Any vacancy in the office of a member of the Tribunal must, within [one month] three months of such vacancy occurring, be filled by the MEC appointing another member under subsection (1) or (3).”.

Amendment of section 13 of Act 50 of 1999

5. Section 13 of the principal Act is hereby amended—
- (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 45
- “(a) rule that any person must comply with a provision of [the regulations relating to unfair practices] this Act;”;
- (b) by the insertion after subsection (11) of the following subsection:
- “(11A) The Tribunal must refer any matter that relates to eviction to a competent court.”; 50
- (c) by the deletion in subsection (12) of the word “and” at the end of paragraph (a), the addition of the word “and” at the end of paragraph (b) and the addition to that subsection of the following paragraph:
- “(c) issue spoliation and attachment orders and grant interdicts.”;

- (d) by the substitution for subsection (13) of the following subsection:
 “(13) A ruling by the Tribunal is deemed to be an order of a magistrate’s court in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and is enforced in terms of that Act.”; and
- (e) by the addition of the following subsection: 5
 “(14) The Tribunal does not have jurisdiction to hear applications for eviction orders.”.

Amendment of section 15 of Act 50 of 1999

6. 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: 10
 “The **[MEC may]** Minister must, after consultation with **[the relevant standing or portfolio committee of the Provincial Legislature responsible for housing matters in the province]** every MEC, by notice in the *Gazette*, make regulations relating to—”; 15
- (b) by the deletion in subsection (1)(f) of subparagraph (v); and
- (c) by the substitution for subsection (2) of the following subsection:
 “(2) At least one month prior to the publication of any regulations contemplated in subsection (1), the **[MEC]** Minister must by notice in the *Gazette* set out the **[MEC’s]** Minister’s intention to publish 20 regulations in the form of a Schedule forming part of such notice setting out the proposed regulations, and inviting interested persons to comment on the said regulations or make any representations which they may wish to make in regard thereto.”.

Amendment of section 16 of Act 50 of 1999 25

7. Section 16 of the principal Act is hereby amended by the deletion of the word “or” at the end of paragraph (h) and the insertion after that paragraph of the following paragraph:
 “(hA) unlawfully locks out a tenant or shuts off the utilities to the rental housing property; or”. 30

Repeal of section 19 of Act 50 of 1999

8. Section 19 of the principal Act is hereby repealed.

Short title

9. This Act is called the Rental Housing Amendment Act, 2007.

MEMORANDUM ON THE OBJECTS OF THE RENTAL HOUSING AMENDMENT BILL, 2007

1. BACKGROUND

The Rental Housing Amendment Bill, 2007, endeavours to address certain implementation problems which have been encountered since the promulgation of the Rental Housing Act, 1999 (Act No. 50 of 1999) (the Act), on 1 August 2000.

2. OBJECTS OF BILL

- 2.1 The definition of an “unfair practice” is substituted to widen its ambit.
- 2.2 Section 4 of the Act is amended to expressly provide for Rental Housing Tribunal rulings regarding the seizure of possessions.
- 2.3 Section 5 of the Act is amended to clarify aspects pertaining to the issuing of receipts by the landlord and to insert a provision dealing with the costs associated with compliance with the provisions of section 5.
- 2.4 The provisions pertaining to the composition of Rental Housing Tribunals, as contained in section 9, are amended to—
 - 2.4.1 extend the period allowed for the filling of vacancies from the current one month to three months; and
 - 2.4.2 reposition the provision dealing with the appointment of the deputy chairperson of the Tribunal.
- 2.5 Section 13 of the Act is amended—
 - 2.5.1 to clarify the jurisdiction of Tribunals with regard to eviction orders;
 - 2.5.2 to allow Tribunals to make a ruling that a person must comply with the provisions of the Act;
 - 2.5.3 to enable Tribunals to issue spoliation and attachment orders and to grant interdicts; and
 - 2.5.4 to provide that rulings by Tribunals must be enforced in terms of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944).
- 2.6 Section 15 of the Act is amended to empower the Minister to make regulations, whereas in the past this power vested in the MEC’s. This amendment has been necessitated by the need to ensure uniformity throughout the country with regard to procedures followed by Rental Housing Tribunals as well as rulings made by such tribunals.
- 2.7 Section 16 of the Act is amended to make unlawful lock-outs and the shutting off of utilities an offence.
- 2.8 Section 19 of the Act is repealed as it made provision for transitional arrangements for a period of three years from the commencement date of the Act (that being 1 August 2000), which period has now lapsed.

3. PERSONS CONSULTED

Written representations were requested and received from provinces and existing Rental Housing Tribunals. In addition certain aspects of the Bill had been discussed in depth with the Department of Justice and Constitutional Development, and the Bill was also published for public comment in the *Gazette* on 22 December 2006 (GG 29503). Comments were received from 12 institutions.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Housing 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.