THE RENTAL HOUSING AMENDMENT BILL

Rental Housing Amendment Bill B56D-2013

The Rental Housing Act which applies to all residential leases in South Africa, is about to undergo some important changes and will affect the relationship between landlords and tenants. Some of the most important questions are addressed here, as well as the elusive issue as to when it will be implemented.

SUMMARY

The Rental Housing Amendment Bill (‘RHAB’) – is it close to being enacted?

Yes and no. The media reported that the RHAB was one of 4 pieces of legislation that would be passed before the national elections which were held in May this year. This did not come to pass with regard to the RHAB. In fact, at date hereof, the Parliamentary Monitoring Group website indicates that the Bill has lapsed! (This does not constitute ‘lapsing’ in the legal meaning of the word. Lapsing occurs as follows: Once an ordinary Bill that affects the provinces has been passed by the National Assembly, it must be referred to the National Council of Provinces (‘NCOP’). The NCOP must pass the Bill, an amended version thereof, or reject the Bill. Such a Bill must, if it was passed by the NCOP without any amendment, be submitted to the President for assent. - If the Committee is unable to secure an agreement on a Bill that was introduced in the NCOP, the Bill lapses. To re-introduce the Bill, the new parliament needs to pass a resolution to that effect and the Bill can then be approved and signed by the President.)

Some of the changes introduced

1. Lease agreement to be in writing

   The Rental Housing Act 50 of 1999 (‘the current Act’) stipulates that while a lease need not be in writing, a landlord must reduce it to writing if the tenant requests this. The RHAB however provides that the landlord must reduce the lease to writing and that certain prescribed provisions must be contained therein. It will be a criminal offence not to comply. The RHAB envisages further that the Department will issue template lease agreements in all 11 official languages to assist landlords and tenants in this regard.

   Note that the lease agreement templates have not yet been published. Landlords and tenants deciding to use the template are in most instances advised to have an attorney check the template to ensure that both parties’ rights are adequately covered. There are often specific issues, special clauses and exceptions that a
landlord or tenant requires to be contained in a lease, which will inevitably require some custom-making of the lease.

It is not considered that an existing or new oral lease agreement will be invalid as between the landlord and tenant; a verbal lease should still be binding. It will however expose the landlord to a possible fine for contravention of the Act.

2. **Right to receive written receipt for all payments**

The RHAB includes a provision stating that a tenant has the right to receive a written receipt in respect of all payments made. The receipt must indicate certain prescribed information, such as the address of the premises, whether the payment was made in respect of arrears, rental, or deposit and the like. Although considered sound administrative practice, it will increase red-tape for landlords who do not make use of agencies to assist them in the management of their leases.

This is however not really a new requirement or departure from the Act as it reads at present. Section 5 of the current Act deems it to be part of any rental agreement (whether in writing or not) that the landlord must furnish tenants with receipts in respect of all moneys received. Perhaps because it was up to now a ‘deemed to be included’ provision, it was often not specifically stated in lease agreements and as a result, both landlords and tenants were not fully aware thereof at all times.

3. **Criminal liability for landlords**

The RHAD makes it a criminal offence not to heed tenant’s rights (some of which are contained in the current Act and some of which add new aspects) and a landlord can therefore face a fine or imprisonment exceeding two years for non-compliance. (This does not apply to the tenant.)

This is probably unnecessarily onerous if the nature of some of these rights are considered against that of criminal liability. For example, is it necessary that non-compliance with the right to receive statements (as discussed in the previous paragraph) is met with criminal sanction?

4. **Maintenance of the premises**

In the current Act, the term ‘maintenance’ is used in the context of aspects that may play a role considered in the realm of ‘unfair practices’. The term is now
given (some) flesh by describing it to mean “such repairs and upkeep as may be required to ensure that a dwelling is fit or suitable to live in”. This is unfortunately quite a vague description. Whilst it is a positive step towards ensuring that when things break or need to be repaired, they are done timeously, it also allows for a lot of leeway in interpretation and it would have been preferable if a definition of what is ‘suitable to live in’ was also included. Imagine the disputes that can arise where a garage, bathroom or cupboard in leased premises has a leak or cockroach infestation? How ‘unsuitable’, for purposes of the RHAD interpretation, does this make the premises to live in?

From the deliberations of the legislative committee, it appears that these amendments are aimed at protecting the rights of lower-end tenants, where often the dwellings are in an unacceptable derelict state. At both ends of the market though, it will be necessary for landlords to monitor and inspect their premises and/or appoint professional rental property managers to do so.

5. Rental Housing Information Office and Tribunals

One welcome aspect of the new law is that it is mandatory for every local authority to establish a Rental Housing Information office.

These offices will be responsible for advising tenants and landlords on their rights and obligations in terms of rental agreements. Every province must further establish a Rental Housing Tribunal (as opposed to the current arrangement where this function is left to the provinces to decide).

6. Inspection at the end of the lease period to check for damage

On termination of the lease it is now the landlord that must arrange for a joint inspection. It is no longer a joint responsibility, as is the position in the current Act.

There is no apparent reason why there should be a bigger onus on the landlord to do this rather than a joint responsibility of both landlord and tenant. Many commentators feel that up until now, the joint responsibility ensured co-operation and participation by the tenant. In fact, it is in the best interests of both the tenant and the landlord for an inspection to be done as fast and effectively as possible: the landlord needs to repay the deposit and get the tenant to vacate so that the new tenant can move in and more often than not, the tenant needs the deposit to use towards a new rental.
7. Landlord to facilitate provision of facilities

The RHAB states that the landlord must facilitate the provision of facilities where possible — a vague clause that, once again, can build contention into an agreement, where none existed before.

8. Delayed implementation

Note that the RHAB states that its provisions will only come into force 6 months after commencement of the amendment act.