



---

**IN THE WESTERN CAPE RENTAL HOUSING TRIBUNAL HELD IN CAPE TOWN ON  
MONDAY, 12 NOVEMBER 2018**

**CASE NO: 21/3/1/2164/H21**

**In the matter between:**

<b>MS Z HENDRICKS</b>	<b>:</b>	<b>COMPLAINANTS / TENANT</b>
<b>And</b>		
<b>MR E KASKAR</b>	<b>:</b>	<b>RESPONDENT / LANLORD</b>
<b>COMPLAINT</b>	<b>:</b>	<b>UNLAWFUL NOTICE TO VACATE EXORBITANT INCREASE IN RENTAL</b>
<b>PROPERTY</b>	<b>:</b>	<b>43 GOLDSMITH STREET SALT RIVER</b>

---

**RULING**

---

**INTRODUCTION**

1. In this matter the Complainant was represented by attorney, Mr Jonty Cogger of Ndifuna Ukwazi Law Centre, while the Respondent appeared in person.
2. The Parties entered into what appears to be a verbal lease agreement in terms whereof the Respondent let the property known as 43 Goldsmith Street, Salt River to the Complainant.

3. The Complainant lodged the following Complaints with the Tribunal:
  - 3.1 Unlawful notice to vacate
  - 3.2 Exorbitant increase in rental
  - 3.3 Unlawful entry
  - 3.4 Failure to Reduce lease to Writing
  
4. Only complaints 3.1 and 3.2 were proceeded with by the Complainant.
  
5. While no claim for Failure to do maintenance was instituted by the Complainant, an order directing the Respondent to do maintenance and repairs to the property within one month of the Ruling, is also being sought on behalf of the Complainant.
  
6. This Ruling shall deal with the Complaints in the following sequence:
  - 6.1 UNLAWFUL NOTICE TO VACATE
  - 6.2 EXORBITANT INCREASE IN RENTAL
  - 6.3 FAILURE TO DO MAINTENANCE

### **UNLAWFUL NOTICE TO VACATE**

7. The notice in question dated 29/1/18 inter alia reads as follows:

"We address you at the instance of our client, E Kaskar who is the registered owner of the property situated at 43 Goldsmith Street, Salt River, Cape Town, 7965."

"Our client's instructions are to inform you that our client require to effect maintenance, upgrades and repairs to the property which he is only able to do if the property is vacant."

"In the circumstances our instructions are to notify you and all those holding under you, as we hereby do, to vacate the premises by 28 February 2018 failing which our instructions are to proceed with ejectment proceedings without notice and the cost of which you shall be held liable for."
  
8. The Complainant who is now 81 years old has stayed in the property for approximately 51 years, shares the property with her son, his wife and their two

minor children. They have refused to vacate as per the notice and are still in occupation of the property.

9. As appears from the notice to vacate, notice was given for purpose of effecting upgrades and repair works to the property. In fact, the notice expressly states that "he (Respondent) is only able to do (upgrades and repairs) if the property is vacant."
10. The notice then goes on to threaten the Complainant and her family with eviction, should they fail to vacate. The notice does not contain any allegations of a breach of the terms and conditions of the lease agreement by the Complainant or members of her family.

During the proceedings however the Respondent stated that he intends selling the property. It also follows that the Respondent's "INTENTION TO SELL THE PROPERTY" is also why he requires the property to be vacated.

11. Mr Cogger on behalf of the Complainant cited case law and referred the Tribunal to Kendal Property Investments v Rutger, where it was inter alia held that the ground of termination (of lease agreement) should not constitute an Unfair Practice and that the grounds should be specified in the lease.
12. The NOTICE TO VACATE is invalid.

### **EXORBITANT INCREASE IN RENTAL**

13. It is common cause that the Complainant moved into the property some 51 years ago, and at the time was paying a monthly rental of R100.00.
14. The current monthly rental is R4 800.00. It escalated in January 2018 from R4 400.00 to R4 800.00.

15. According to Mr Cogger, the Complainant was only challenging the escalation from R4 400.00 to R4 800.00. Mr Cogger also argued that R4 400.00 would be a fair monthly rental.
16. It was argued on behalf of the Complainant that the overriding requirement for a determination of rent in terms of Section 13(5) of the Rental Housing Act is that it be "just and equitable to both tenant and landlord".
17. In order to determine a rental that is "just and equitable" to both the tenant and landlord it was submitted by Mr Cogger that the Tribunal should take into account the following factors:
  - 17.1 Prevailing conditions of supply and demand;
  - 17.2 The need for a realistic return on investment for investors in rental housing;
  - 17.3 Incentives, mechanism, norms and standards introduced by government;
  - 17.4 The Complainant's personal circumstances and ability to absorb the rental increase.
  - 17.5 The state of maintenance and repairs of the property, and
  - 17.6 It was furthermore submitted that a just and equitable rental is a rental that the Complainant can reasonably be expected to pay.
18. A relatively detailed outline of the Complainants contentions as per paragraphs 17.1 to 17.6 is given in the Complainant's Heads of Argument and shall not be repeated in this Ruling. This was further supplemented by the evidence of the Complainant, which is part of the record and will also not be repeated.
19. The Respondent testified that:
  - 19.1 The increase is less than 10%;
  - 19.2 The current rental is way below marked related rental;
  - 19.3 The property in its current state could easily be sold for more than 1.5 million rand.
  - 19.4 He is not benefiting from the current lease agreement.
20. It is the finding of the Tribunal that the current monthly rental of R4 800.00 is not just and equitable as Contemplated in Section 13(5) of the Rental Housing Act.

## **FAILURE TO DO MAINTENANCE**

21. While the Complainant lodged a number of Complaints, she did not institute one for FAILURE TO DO MAINTENANCE. She however now seeks an order directing the Respondent to effect the necessary repairs to the property, which in effect is relief for Failure to do Maintenance.
22. The question to be answered is whether the Tribunal may consider this Complaint.
23. The normal principle applied by our conventional courts is that the Respondent should at least be notified of all the Complaints against him and that he should be afforded a fair opportunity to prepare and respond to the Complaints against him. In this instance the subpoena through which notice was given makes no mention of this particular Complaint. (FAILURE TO DO MAINTENANCE)
24. It is therefore necessary to find authority relating to the scope of the Tribunal's jurisdiction when hearing Complaints and to this end the relevant Sections of the Rental Housing Act will be canvassed.
25. Section 13 of the Rental Housing Act inter alia makes provision for:
  - 25.1 Any tenant or landlord or group of tenant's or landlords or interest groups to lodge a Complaint with the Tribunal,
  - 25.2 The Tribunal staff to conduct a preliminary investigation
  - 25.3 The Tribunal to conduct a hearing and to make such a Ruling as it may consider just and fair in the circumstance.
26. Section 13(4)(c)(iv) reads as follows:

Where a Tribunal at the conclusion of a hearing is of the view that an Unfair Practice exist, it may make, any Ruling that is just and fair to terminate any Unfair Practice, including, without detracting from the generality of the foregoing, a ruling to discontinue lack of maintenance

27. On the face of it the above quoted (not verbatim) portion of Section 13 allows the Tribunal to decide upon an issue if it is satisfied that an Unfair Practice exist. It would appear that the Tribunal may (if an Unfair Practice exist) make a Ruling irrespective of whether or not a specific complaint for Failure to do Maintenance has been lodged by the Complainant.
28. In the present case there exists reason to be cautious. These reasons though not limited to, include the following;
- 28.1 The Audi Alterum Partem principle is central to our justice system.
- 28.2 During the proceedings there was no application on behalf of the Complainant to amend her complaint.
- 28.3 Whilst the Complainant gave detailed evidence during the hearing of the lack of maintenance and the state of poor repair of the property, it was never stated by the Complainant or on her behalf that she wanted the Respondent to repair the defects to the property. In fact, she testified that her son normally attends to maintenance works at the property.
- 28.4 No evidence was given that the Complainant, who has been occupying the property for the last 51 years has notified the Respondent that the property requires maintenance works.
- 28.5 Evidence was given to the effect that the lease agreement has expired.
29. For the reasons set out herein it would not be fair and just to consider the complaint for "FAILURE TO DO MAINTENANCE" which was not specifically instituted by the Complainant.

## **RULING**

After having considered the evidence and submissions on behalf of the Complainant and Respondent, the following Ruling is made;

1. The Notice to Vacate dated 29 January 2018 by the Respondent's attorneys, PARKER, HOLT INCORPORATED, addressed to the Complainant constitutes an Unfair Practice.
  - 1.1 The notice as per (1) above is invalid and hereby set aside.
2. The monthly rental of R4 800.00 is hereby declared to be unfair and unjust.
  - 2.1 A monthly rental of R3 000.00 is equitable, fair and just.
  - 2.2 The Complainant shall with effect from 1 December 2018 pay the Respondent a rental of monthly R3 000.00.
3. No Ruling is made in respect of the maintenance work to the property.

**CHAIRPERSON**

**DATE:** 10/12/18

Presiding : T Cloete, S Morara, AM Du Plessis, NI Van Stade

**NOTE: A Ruling of the Tribunal is deemed to be an order of a magistrate court in terms of the Magistrates' Courts, Act 1944 in terms of Section 13 (13) of the Rental Housing Act, 1999. It is an offence in terms of Section 16 of the Rental Housing Act, 1999, not to comply with this ruling. If convicted, the guilty Party may be liable to pay a fine or be imprisoned up to a maximum of two years, or to both, a fine and imprisonment.**