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GAUTENG
LEGISLATURE

HOUSING PORTFOLIO COMMITTEE

NEGOTIATING MANDATE

ON

RENTAL HOUSING AMENDMENT BILL [B30B-2007]
(Section 76)

05 November 2007

1. **INTRODUCTION**

The Acting Chairperson of the Housing Portfolio Committee, Mr. S Mkhize, tables the Committee's Negotiating Mandate on Rental Housing Amendment Bill [B30B-2007], a Section 76 Bill, as follows:

2. **PROCESS FOLLOWED**

The Speaker formally referred the Rental Housing Amendment Bill [B30B-2007] Section 76 Bill, on Wednesday, 26 September 2007 to the Portfolio Committee on Housing, in terms of Rule 232 (1) for consideration and reporting.

On Friday, 12 September 2007, the NCOP Permanent Delegate, Mr. A M Mzizi briefed the Committee on the objectives of the Bill and Ms. Petal Thring, the Chief Director for Policy, Planning and Research in the Gauteng Department of Housing briefed the Committee on the financial and socio-economic impact of the Bill on housing delivery.

On Thursday, 18 October 2007 the Committee held a public hearing on Rental Housing Amendment Bill [B30B-2007] in the City Hall of the Gauteng Provincial Legislature. Ms Petal Thring, Chief Director for Policy Planning and Research in the Gauteng Department of Housing made a presentation on Bill, citing the objectives, the socio-economic and legal impact of the Bill. The stakeholders were given an opportunity to make verbal and written submissions. The NCOP Permanent Delegate, Mr. MA Mzizi, Ms Petal Thring, Chief Director for Policy Planning and Research, officials of the Rental Housing Directorate in the Gauteng Department of Housing together with Members of the Housing Portfolio Committee had an opportunity to give responses to the submissions made. Stakeholders requested for an extension for the submission of additional written inputs highlighting that limited time has been given to make submissions. An extension for the submission of inputs was granted until Tuesday, 23 October 2007.

On Monday, 05 November 2007, the Committee deliberated on the technical and substantive amendments and adopted the negotiating mandate on Rental Housing Amendment Bill [B30B-2007], Section 76 Bill.

3. PRINCIPLE AND DETAIL OF THE BILL

The Rental Housing Amendment Bill 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. The Bill seeks to make consequential amendments to other legislations in order to update outdated references.

4. OVERVIEW OF PUBLIC HEARINGS

During public hearing on Rental Housing Amendment Bill [B30B-2007], Section 76 Bill, on 18 October 2007, the Committee received both verbal and written submissions from stakeholders and members of the public, in line with the Legislature's Constitutional obligation of facilitating and promoting public involvement in the legislative processes in the Legislature and its committees. The stakeholders made the following inputs:

4.1. VERBAL SUBMISSIONS

- Which organisations were involved in the drafting of the Bill since the information officers in the branches were not involved? In response it was indicated that the Bill was published in the Government Gazzette on 22 December 2006, and certain aspects on the Bill have been discussed in depth with the Department of Justice and Constitutional Development and comments were received from 12 institutions.

- Tenants do not understand the contract that they sign prior to the occupation of the property. In response it was highlighted that landlords should utilize contracts which are clearly articulated and sold cheaply at CNA. It was further highlighted that oral agreements do apply but it is better to sign a written agreement because it set out each person's rights.

- Landlords want to take profiles of those who are visiting. In response it was indicated that the Bill allows relatives to visit the tenant and the contract should stipulate the issue of visitation. It is also the responsibility of the tenant to inform the landlord that he/she is expecting visitors. On the other hand, if a tenant sign a contract with a landlord and not follow the regulations stipulated, this may result in dispute.

- If services are not provided where should tenants go to lodge complaints? In response it was highlighted that Tribunals are quazi-judiciary which assist in the interdict process and dispute resolutions. Furthermore, if people know their rights, they will be able to report grievances.

- Deposit paid prior to occupation should accrue interests. In response it was highlighted that the balance of the deposit paid prior to occupation should be refunded to the tenant within 21 days of departing the property

- Landlords not paying rates and taxes to municipalities while tenants are paying rent and this leads to termination of electricity and water provision. In response it was highlighted that landlords must provide invoices/ receipts of the rental costs and tenants should provide receipts as proof of payments made on rentals in the case of dispute resolutions.

- Landlords are charging illegal and exorbitant funds on small properties. In response it was indicated that public rentals are set at a uniform rate while rates for private rentals are determined individually by landlords. Tenants should go through the contract with the landlord to have an understanding of what the contract entails.

- People are putting RDP houses for rental. In response it was stipulated that it is unlawful to rent RDP houses. But if an agreement has been reached between the owner and the tenant a contract should be signed. If a tenant is renting in an informal settlement, he/she should register on the Housing Demand Database (waiting list) for an RDP house or other alternative housing tenure in the case of not qualifying for an RDP house.

- What does the Bill say about the sub-tenant and the lease period? In response it was indicated that there is no relationship between the sub-tenant and the landlord because it is the tenant who entered into an agreement with the sub-tenant. Sub-tenants are always in a vulnerable position, so it is better to be a tenant rather than a sub-tenant because in the case of disputes with the landlord, a tenant would be in a position to take the landlord to court while a sub-tenant cannot. Furthermore, there is no minimum or maximum period to lease a property unless stated in the contract. If a tenant pays rent monthly or weekly then it means he/she has a monthly or weekly lease.

- What does the Bill say where there is no maintenance of property which results in the damage of the tenant's goods? An indication was made that if the tenant's goods are damaged due to the landlord's failure to maintain the property, the tenant can claim for damages from the landlord.

- The Bill should be translated in other languages to enable Community Development Workers to undertake consumer education on the Bill. In response it was highlighted that National Department has initiated that all Bills should be written in other African languages and this matter is under progress and it would be implemented in the future.

- Courts always rule in favour of landlords in the case where the tenant's goods have been confisticated. In response it was indicated that it is unlawful to confisticate the tenant's goods without a court order and the tenant should report the matter to the Tribunal.

- How will Tribunals help in the case of unlawful landlords who evict tenants? In response, it was highlighted that Tribunals do not issue court orders but tenants are welcome to approach them for guidance and assistance.

- The Bill should indicate the age on which a person qualifies to sign a lease. In response it was highlighted that the lawful age to sign a lease is when a tenant is 18 years old.

4.2. WRITTEN SUBMISSIONS
ROY STEPHEN
4.2.1 Current amendment wording

Section 3(c) of the Rental Housing Amendment Bill states as follows:

"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:

> **"(p) any costs in relation to contract of lease shall only be payable by the tenant upon proof of factual expenditure by the landlord."**

The intention of the currently proposed sub-clause (p) in the original Rental Housing Act, No 50 of 1999 to require the landlord to produce factual proof of expenditure incurred by the Landlord which is to be recouped from the tenant, is to be **welcomed**. The current proposal, however, contains what is believed to be an **unintended consequence**.

Proposed amendment wording

An amendment is required to the sub-clause (p) to prevent an **unintended consequence** which could prejudice the tenant. The current wording does not provide for the option of the landlord and the tenant mutually agreeing to payment of an amount which is less than the quoted expenditure for, say, the replacement of a damaged fixture (which cost would be incurred, in terms of the Rental Agreement, when a damaged fixture or fitting is irreparable and requires replacement).

The following wording is therefore proposed:

> **"(p) any costs in relation to contract of lease shall only be payable by the tenant upon proof of factual expenditure by the landlord, or shall be payable as mutually agreed between the landlord and the tenant."**

Motivation

1 Housing Rental Agreements generally include a clause which entitles the landlord to recoup from the tenant the cost of any repairs for damages caused to the premises by the tenant during the period of the Agreement. In some instances, damage arising from the negligent actions of the tenant may occur which deface and/or weaken a fixture or fitting in the premises, but which **damages do not render the fixture unusable**. The landlord is prejudiced by such damage, and the landlord is entitled to seek reparation from the tenant because:

- the fixture may, in time, become unusable because of the damage, thereby shortening the usable life of the fixture, and
- due to defacement of the fixture, the premises becomes less marketable to future tenants.

Such **damage cannot be regarded as "normal wear and tear"**, for which the tenant should not be required to compensate the landlord.

In some instances, repairs to the damaged fixture are not possible, and the fixture would require replacement, sometimes at substantial cost. The landlord would technically be in his/her right to demand a full replacement of the fixture. However, **for the tenant to fund the full replacement cost would prejudice the tenant** on the basis that

the damage caused may not be reasonably commensurate with the full replacement costs of the fixture. In such instances, it would be equitable for **the landlord and the tenant to mutually agree on a percentage of the replacement cost** a reasonable recommence to the landlord for the damage caused by the tenant. If a percentage of the replacement cost cannot be mutually agreed, the landlord should retain the right to enforce the terms of the Rental Agreement and require the full replacement cost to be paid by the tenant, and/or the original wording of sub-clause (p) should apply.

To illustrate: The tenant places a very hot pot on a melamine kitchen counter, which causes the melamine surface to discolour and blister, resulting in disfigurement of the counter. Such melamine surfaces are not reparable, and the section of the counter will require replacement. The counter is still usable, but has now been defaced. Full replacement of the counter at, say, R2 000 is unreasonable, and it should be possible for the landlord and the tenant to mutually agree to a percentage of the full replacement cost at, say, 25% of the full replacement cost.

2 Paying for the full replacement cost of a damaged fixture may result in **betterment for the landlord** in that the life of the fixture may have already been shortened through normal wear and tear. For example, if the reasonable expected life of a fixture is 10 years, and the fixture is irreparably damaged 6 years after installation, the tenant should reasonably only pay for 40% [(10 – 6)/10]% of the replacement cost.

3 It is not acceptable to state that the landlord should **claim against House Owners' Insurance cover** for the damage to be repaired, because:

- The House Owners' insurance cover in place sometimes does not cover incidental damage to fixtures. For Sectional Title housing, insurance cover is often arranged on behalf of the landlord who has little (if any) say in the type and extent of House Owners' insurance cover which is put in place.
- Insurance companies tend to increase insurance premiums in response to a poor claims record, and the landlord, or the entire Sectional Title complex, would be prejudiced by the higher insurance premiums.

4.2.2 The JICBC comments regarding the amendment of the Act are –

- The Rental Housing Act regulates the terms and application of lease agreements between landlords and tenants. It is imperative that the input from both these parties be considered.
- The consultation process is flawed as insufficient notice was given regarding the forwarding of comments and date of the public hearing to all stakeholders.
- Insufficient public participation has resulted in stakeholders not being able to collate proper comments regarding the proposed amendments.

4.2.2 AFHCO Group Holdings comments on the Bill

<u>The amendment to section 5 sets out in detail what information must be included on a "receipt".</u>

The requirement to issue a "receipt" is completely out of sync with modern business, and in particular current IT systems and business procedures, without which an effective business cannot function. It is an antiquated concept in modern business.

It appears the Act envisages a situation for tenant payments that existed many years ago where tenants would make payment direct to the Managing Agent/Landlord at their offices. Most management agents will today not accept payment at their premises due to the prevailing crime situation in the country.

Afhco processes about 4000 receipts of funds from tenants per month. These payments by tenants are made by either direct deposit by the tenant to the Property Management trust account, or by direct debit order against the tenant's bank account.

It is not possible or practical to issue a "receipt" as set out in the Act because:

- in most cases the breakdown of the amount paid by the tenant is not known, and the tenants intentions are not known
- the tenant is not present to receive a receipt as he is making the payment via an indirect process.

The monthly tenant statement does however reflect all charges made by the Managing Agent and all payments made by the tenant. In addition, the tenant will be able to retain a copy of his deposit slip if making a direct deposit, or reflect a referenced debit on his bank statement as proof of payment.

2 General

It is clear from the proposed amendments that little consideration is given to the problems faced by Landlords/Managing Agents.

- The long awaited PIE Act amendments are clearly very low on the agenda.
- Landlords are expected to carry the cost of electricity and water utilised by defaulting tenants. What is the equity in this concept, and why should a Landlord have to carry the risk of bad debt. Also, why is City Council privileged in that it can terminate electricity for non-payment, but a Landlord may not?
- The process of obtaining an eviction through the court process is extremely costly and takes several months, far exceeding the deposit held by a Landlord.

- The Housing Tribunal now also takes several months to finalise matters.
- The new amendments propose that the Housing Tribunal may not deal with eviction matters. This is a clear indication that the only envisaged purpose of the Tribunal is to "protect" tenants from landlords, while providing no relief to Landlords.

The Department also fails to understand that ultimately all costs incurred due to protective legislation will ultimately be borne by the tenant. For example, if the current amendments are passed, we will need to demand higher deposits

from tenants in order to protect ourselves. In reality, all the amendments achieve is to prejudice the majority of tenants (some 99.5% in the case of Afhco) in order to protect those few tenants that have little regard for their leases or obligations and know that they can hide behind protective legislation.

If the amendments are intended to deal the minority of unscrupulous landlords, then this is a typical case of "throwing the baby out with the bathwater" and should be reconsidered. Enough legislation exists to deal with these bad landlords, particularly with the Housing Tribunal achieving the status of a magistrate's court.

4.2.3 Property Owners and Managers Association (POMA) comments on the Bill

OBJECTION TO THE AMENDMENT OF SECTION 4 OF THE RENTAL HOUSING ACT, 50 OF 1999 ("THE ACT")

1. The Bill proposes deleting the words "*bona fide*" with respect to the qualification of the type of visitors of tenants against whom a landlord may not unfairly discriminate.

2. POMA is of the view that there is no need to effect this deletion as it will only serve to encourage *mala fide* visitors, indeed, this has been the experience of many POMA members. By way of example, residential buildings have access control by security officers employed by the landlord in order to protect tenants. The security risks in such buildings in the inner city are well known and need not be elaborated upon here. The proposed amendment will have the effect of diminishing the landlord's common law right to determine who may and who may not enter its property and also erodes the ability of security officers performing access control to effectively monitor and assess visitors that might well pose a potential security risk to tenants.

3. Another example is where criminal elements, having the covert aim of "hi-jacking" a building in order to collect rentals for themselves and terrorise the tenants, enter the building and gain a foothold there under the guise of being visitors. The proposed amendment will have the effect of making it far more difficult to screen such visitors, who will doubtlessly abuse the legislative relaxation in order to achiever their *mala fide* purposes.

4. We submit that this amendment cannot serve to further the interests of anyone other than such criminal elements.

OBJECTION TO THE AMENDMENT OF SECTION 13 OF THE ACT

5. The affect of the proposed amendment is to amplify the powers that have already been granted to a rental housing tribunal by specifically granting such a tribunal the power to *"issue spoliation and attachment orders and grant interdicts."*

6. A further proposed amendment specifically states that the Tribunal does not have jurisdiction to hear any applications for eviction orders.

7. It is submitted that these proposed amendments emphasise and strengthen POMA's perception that the Act is heavily biased in favour of tenants to the detriment and expense of property owners and landlords.

8. It is important to note that POMA is in fact in favour of the amendment, to the extent that it allows for the possibility of approaching the Tribunal with a complaint of non-payment of rental and of being able to obtain attachment orders.

9. One of our major reservations however is that, although the proposed amendment provides for a ruling by a Tribunal to be enforced in terms of the Magistrates' Courts Act, 1944, there is no contemplated amendment of the Rules of the Magistrates Court (of which we are aware) and it is highly doubtful whether any effect will be able to be given to this proposed amendment in the absence of such amendments to the Magistrates' Courts Rules.

10. More importantly, in the absence of the inability of the Tribunal to make eviction orders, coupled with the fact that unlawful lock-outs and cutting-off of utilities is a criminal offence, there is no appropriate counter-balance that effectively weighs the rights and duties of both property owning parties and tenant parties.

11. We are of the view that a fair counter-balance would be achieved if the non-payment of rental and the illegal holding-over after the expiry of a lease also be made a criminal offence.

12. In our submission, the creation of a statutory criminal offence for what is essentially a possible breach of civil law obligations is inappropriate, inequitable, unfair and quite simply, wrong.

13. It is invidious that the Rental Housing Tribunal, which is now being extended powers to hand down rulings that are binding in law and which effectively give it the same power as a Magistrates Court, is specifically prohibited from granting an eviction order, as might be ordered by a Magistrates Court.

14. In appropriate cases eviction orders are necessary and appropriate. And a property owner is compelled to follow a same lengthy court procedure, even in the face of an unjustified and unlawful withholding of rent or holding over of the premises.

15. We are at a loss to understand why landlords are specifically being denied the opportunity of obtaining legal eviction orders from the Tribunal.

16. We find it puzzling that the Legislature has entrusted and empowered the Tribunals to consider and apply the legal principles of the *mandament van spolie* and also that relating to interdicts but at the same time, has declined to grant that same Tribunal the jurisdiction to hear and grant orders of eviction, which are no less and no more legally complex than spoliation orders and interdicts.

17. In this regard, POMA submits that there are several reported decisions of the High Court that illustrate that the granting of spoliation orders in cases where they are not in fact applicable have the undesired effect that orders

for specific performance of contractual obligations are effectively granted in such proceedings.

18. Moreover, POMA is doubtful that Rental Housing Tribunals are always alive to the distinction between real rights and personal rights, which is a pre-requisite for the hearing of cases and complaints involving alleged spoliations.

19. A further important objection to the proposed amendment of Section 13 of the main Act is that, whilst giving a rental tribunal all the powers of a Magistrates Court, save for the power to order an eviction, no provision has been made for any appeal of any such order of a tribunal. At the moment, to the best of POMA's knowledge, any ruling or order of a Rental Housing Tribunal may not be appealed but only taken on review, as set out in 17 of the Act. It is trite that the grounds of review are far more narrow then those under which appeal proceedings may be launched.

20. This is indeed a worrying state of affairs as the potential of rulings and orders that are incorrect in law and fact will be handed down by the Rental Tribunal which are simply not appealable, despite their far-reaching effects.

21. It is POMA's considered view that in the light of the further extension of powers granted to such a Tribunal, namely the power to issue spoliation and attachment orders and grant interdicts that such orders ought to be subject to the right of appeal, in the same manner as are final orders of a Magistrates or High Court. We submit that this must be an omission on the part of the Legislature in drafting the proposed Amendment Bill, as this effectively makes a Rent Tribunal more powerful than an ordinary court of law whose final orders are always subject to the right of appeal.

22. It bears repeating that POMA does not in any way condone the unlawful taking of the law into one's own hands, either on the part of tenants or on the part of property owners. POMA is, and has always been, committed to the rule of law at all times.

23. That being said, however, POMA is of the firm view that the proposed amendment to this Section of the Act is highly contentious and unclear. It also exaggerates the inequities very strongly in favour of tenants as set out above.

OBJECTION TO AMENDMENT OF SECTION 16 OF THE ACT

24. At the outset, we state that POMA does not object to the criminalising of the unlawful locking-out or unlawful cutting off of utilities, *per se*.

25. What POMA objects to is the fact that both these unlawful delictual acts have now been criminalised without any effective counter-balance being created by the Legislature, by, for example, the creation of a criminal offence for certain unlawful delictual acts normally committed by a tenant, for instance, an unlawful withholding of rent or an unlawful holding over of the premises to the detriment of bona fide tenants.

26. In terms of the proposed offence, a guilty party can be fined or imprisoned for a period of up to two years or both.

27. POMA understands that it is highly undesirable for a tenant and his family – even one who refuses or fails to pay rent – to be evicted and put out onto the street without a court order authorising this. POMA understands this to be the main rationale for the creation of this criminal offence.

28. On the other hand, however, a property owner or landlord who has not been paid rent for several months and who faces mounting bills in respect of maintenance, salaries, water, electricity and other utilities, simply cannot afford to finance such tenants. The landlord cannot afford to provide accommodation to other tenants and their families who are willing and able to pay rent and the owner even runs the risk of losing the property altogether. Surely this must be deemed just as undesirable a situation as the other.

29. The eventual effect of an amendment to this Section of the Act will serve to actively discourage investment in the purchase, maintenance and upgrading of rental accommodation which is sorely needed, not only in the Johannesburg Inner City area, but in all urban areas affected by the proposed amendment.

30. Government, whether it be National, Provincial or Local, cannot even begin to meet any of its stated objectives with regard to the provision of adequate housing for all if the legislation it promulgates provides what is tantamount to a disincentive and discourages the efforts of both property owners and investors.

31. Moreover, one must consider the all-too-prevalent situation where tenants fail to pay for the water and electricity consumed by them.

32. The Constitutional Court has already ruled that a landlord remains liable to the service provider for payment of those services. Caught in this invidious position, the landlord is thus obliged to make payment for services that are being freely consumed by tenants who simply refuse to pay for them, well-knowing that they cannot be compelled to do so. Such tenants are also acutely aware that it is possible to draw out any legal process aimed at their eviction for several years during which they will enjoy the provision of free utilities and accommodation, with the landlord powerless to stop this abuse, which is now given the added protection of criminal sanctions against landlords wishing to protect their investment and minimise their losses.

33. POMA is of the view that a landlord is surely entitled to similar assistance of the Legislature in the creation of a further criminal offence on the part of a tenant who unlawfully consumes services or occupies property without paying for it.

34. By amending the Rental Housing Act as proposed, the Legislature is effectively acting against landlords by making certain acts (which are in any event illegal), a criminal offence punishable by law. In other words, a landlord who takes the law into his own hands faces a drastically increased sanction. No counter-balancing sanction however faces a tenant who equally takes the law into his own hands when he or she illegally holds over, or consumes services for which they do not pay and have no intention of ever paying.

35. This effectively reduces the remedies available to landlords to a bare minimum, while at the same time fortifying and increasing the remedies available to tenants, even defaulting and illegal tenants.

36. This invidious and inequitable state of affairs threatens the very existence of a landlord's business operation.

37. POMA raises a further objection to the exact wording of the proposed Section 16 (hA).

38. Current legislation, specifically the Electricity Regulation Act No. 4 of 2006 ("the ERA"), and also regulations of the local authorities, empower local authorities to cut off delivery of services such as water and electricity in the event of non-payment by consumers.

39. POMA is of the view that its members are entitled to the same rights as these local authorities, by virtue of the fact that landlords provide an identical service to tenants. Landlords are deemed to be service providers in terms of the ERA, as they purchase electricity in bulk from local authorities and then on-sell it to their tenants who reside in multi-tenanted buildings.

40. The abovementioned legislation however provides that a service provider must be licensed or registered in terms of the ERA.

41. At the moment, POMA has conducted a detailed and serious investigation into this matter and has ascertained that the National Energy Regulator of South Africa (NERSA) is presently conducting research into the scope and effect of the ERA. Moreover, Regulations have not yet been drafted or promulgated in terms of the ERA. It is for this reason that any application by a landlord to be licensed or registered as a service provider in terms of the ERA cannot be given any effect at the present moment.

42. In POMA's view, the proposed amendment of Section 16 of the Rental Housing Act does not appear to have given any consideration to the provisions of the ERA. We say this because the proposed amendment does not define exactly what is mean by "*unlawful*" shutting off of utilities. It is imperative that landlords know exactly what their powers are so as to be able to avoid falling foul of the proposed amended Section 16 and risk incurring criminal sanctions.

5. FINANCIAL AND SOCIO-ECONOMIC IMPACT ASSESSMENT OF THE BILL

5.1. FINANCIAL IMPLICATIONS

In respect of the financial implications of the Bill on the province, the Gauteng Department of Housing confirmed to the Committee that there are no direct financial implications and that the Department supports the Bill as introduced.

5.2. SOCIO-ECONOMIC IMPACT

With regards to the socio-economic impact of the Bill the Gauteng Department of Housing highlighted to the Committee that the Bill will:

- Address various implementation problems experienced by Tribunals;

- Continuously enhance and respond promptly to any challenges experienced by Tribunals.

6. COMMITTEE COMMENTS AND CONCERNS

- The Bill does not clarify whether the chairperson of the Tribunal would be elected from national government or provincial government.

7. PROPOSED RECOMMENDATIONS CONCERNING THE BILL

1.1 **Amendment of section 1 of the Rental Housing Act, 1999 (the Act) (section 1 of the Bill)**
The committee recommends that the proposed amendment be supported as it widens the ambit of the definition of an "unfair practice".

1.2. **Amendment of section 4 (1) of the Act (section 2 (a) of the Bill**
The committee recommends that the proposed amendment be supported as it widens the type of visitor (of a tenant) against whom a landlord may not unfairly discriminate.

1.3. **Amendment of section 4 (3) (c) of the Act (section 2(b) of the Bill)**
The committee notes the proposed amendment to provide for tribunal rulings regarding the seizure of possessions.

1.4. **Amendment of section 4 (4) of the Act (section 2 (c) of the Bill**
The committee recommends that the proposed amendment be supported as it at is of a technical nature to align with the proposed amendment of section 4 (1) of the Act.

1.5. **Amendment of section 5 (3) (b) of the Act (section 3(a) of the Bill)**
The committee recommends that the proposed amendment be supported in principle subject to the further amendment that current IT systems and business procedures be taken into account to reflect that a bank deposit slip and/or proof of an electronic fund transfer shall constitute a receipt and the information contemplated in the paragraph appear in the following monthly tenant statement.

1.6. **Amendment of section 5 (3) (d) of the Act (section 3(b) of the Bill)**
The committee recommends that the proposed amendment be supported as it clarifies interest payable on deposits.

1.7. **Amendment of section 5 (3) of the Act (section 3 (c) of the Bill)**
The committee recommends that the proposed amendment be supported in principle subject to the further amendment that the costs are in relation to the *drawing of a contract of lease*.

1.8. **Amendment of section 9 of the Act (section 4 of the Bill)**
The committee recommends that the proposed amendments be supported as they extend the period for the filling of vacancies from the current 1 month to 3 months and reposition the provisions dealing with the appointment of the deputy chairperson of the Tribunal.

1.9. **Amendment of section 10 of the Act (section 5 of the Bill)**
The committee supports the proposed amendments that provide for the Tribunal to meet in the absence of the chairperson or the deputy chairperson.

1.10. **Amendment of section 13 (4) of the Act (section 6(a) of the Bill)**
The committee recommends that the proposed amendment be supported as it provides that any person must comply with a provision of the Act (which includes the unfair practices regulations).

1.11. **Amendment of section 13 (12) of the Act (section 6(b) of the Bill)**
The committee recommends that the proposed amendment be supported in principle subject to the amendment reading-

"issue spoliation orders, grant interdicts and make rulings concerning unlawful attachment of property".

1.12. **Amendment of section 13 (13) of the Act (section 6 (c) of the Bill**

1.12.1. The committee notes the property owners' submission that there is no contemplated amendment of the Rules of the Magistrates' Court and it is highly doubtful that any effect will be given to the proposed amendment in the absence of such amendments to the Rules of the Magistrates' Court.

1.12.2. The committee recommends that that the proposed amendment be supported as it clarifies that rulings of the Tribunal be enforced in terms of the Magistrates' Courts Act, 1944

1.13. **Amendment of section 13 of the Act (section 6 (d) of the Bill)**
The committee recommends that the proposed amendment be supported as it clarifies that the Tribunal does not have jurisdiction to hear applications for eviction orders.

1.14. **Amendment of sections 15 (1) and (2) of the Act (sections 7(a), (b) and (c) of the Bill)**
The committee recommends that the proposed amendments be supported as it aims to ensure a uniform set of regulations in all the provinces of South Africa.

1.15. **Amendment of section 16 of the Act (section 8 of the Bill)**

1.15.1. The committee notes the proposed amendment to make unlawful lockouts and the shutting off of utilities an offence together with the reasons furnished by the property owners objecting to such an amendment.

1.15.2. The committee notes further the objection by the chairperson of the Gauteng Rental Housing Tribunal to the proposed amendment on the following grounds -

- making unlawful lockouts and a cutting off of utilities a criminal offence is unnecessary and does not take into account the reality on the ground in multi tenanted buildings where for example, it may become necessary to terminate the electricity supply to a unit for a very short period of time because the recalcitrant tenant refuses to turn his or her music down or causing some other nuisance that is inconveniencing other tenants
- there is no appropriate counterbalance that effectively weighs the rights and duties of landlords and tenants
- the creation of a statutory criminal offence for what is essentially a possible breach of civil law obligations is inappropriate and unfair
- since 2001, the Gauteng Rental Housing Tribunal has had a set of unfair practices regulations in place, which deals with a very wide range of obligations of landlords and tenants and which more specifically deals

in greater depth with *eviction and changing of locks* and with *a landlord's obligations concerning municipal services (utilities)*

- the Senior Public Prosecutor and the Chief Magistrate, Johannesburg have previously advised that the criminal justice system is stretched to the limit dealing with more serious criminal offences and could not in these circumstances be expected to prioritise less serious offences.

- it follows that the proposed amendment should be deleted and is best dealt with by regulation and the legislature should guard against killing the proverbial ant with a hammer, particularly when it is highly unlikely that any criminal prosecution will follow

1.16. **Additional proposal not appearing in the Bill: Amendment of section 17 of the Act**

1.16.1. The committee notes the objection by the property owners that any ruling of the Tribunal may not be appealed but only taken on review to a High Court. Since the grounds of review are far more narrow than those under which appeal proceedings may be launched, incorrect rulings in law and fact are not appealable, despite their far-reaching effects. Given the extension of powers granted to the Tribunal and since Tribunal rulings are deemed to be orders of a Magistrates' Court, the Tribunal's rulings should be subject to the right of appeal in the same manner as final orders of a Magistrates' Court. To do otherwise, effectively makes the Tribunal more powerful than an ordinary court of law as final court orders are always subject to the right of appeal.

1.16.2. Accordingly, the committee recommends that section 17 of the Act be amended to make rulings of the Tribunal subject to both appeal and review.

1.17. **Additional proposal not appearing in the Bill: Amendment of section 13 (12) of the Act**

1.17.1. The committee notes the Gauteng Rental Housing Tribunal's submission that section 13 (12) of the Act be further amended to extend the Tribunal's powers to include the power to rescind its rulings based on good cause shown by a party to a ruling.

1.17.2. The reason for this submission is that there have been instances where a party having received a summons to appear before the Tribunal, is for good reason unable to do so and the Tribunal has subsequently made a ruling in that party's absence. In such instance, that party should be entitled to make an application before the tribunal to have the ruling rescinded.

1.17.3. Accordingly, the committee recommends that section 13 (12) of the Act be further amended to extend the tribunal's powers to include the power to rescind a ruling based on good cause shown by a party to a ruling.

8. NEGOTIATING POSITION ADOPTED BY COMMITTEE

The Housing Portfolio Committee supports the principle and details of the Rental Housing Amendment Bill [B30B-2007].

Mr. S Mkhize
Acting Chairperson: Housing Portfolio Committee
05 November 2007