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PROVINCIAL NOTICE

[No. 152 of 2003]

UNFAIR PRACTICES REGULATIONS

I, SL Tsénoli, Member of the Executive Council of the Province responsible for Local Government and Housing, under section 15(2) of the Rental Housing Act, 1999 (Act No. 50 of 1999), after consultation with the portfolio committee of the Provincial Legislature responsible for housing matters, hereby make the Regulations as contained in the Schedule.

SCHEDULE

Definitions

1. In these Regulations, any expression or word to which a meaning has been assigned by the Act, shall have the same meaning, unless the context otherwise indicates, and –

“services” means the provision of water, electricity, gas services and refuse removal;

“the Act” means the Rental Housing Act, 1999 (Act No. 50 of 1999); and

“Tribunal” means a Rental Housing Tribunal established in terms of section 7 of the Act.

Unfair practice

2. Any person who contravenes any provisions of these Regulations commits an unfair practice.

Changing of locks

3. The landlord or tenant may not change any locks providing access to the dwelling –
 - (a) unless it is necessary due to fair wear and tear or other reasonable causes;
 - (b) without reasonable notice of the proposed change to the other; and
 - (c) unless duplicate keys are provided to the other immediately upon such change of locks.

Conditions and maintenance

4. A landlord must –
 - (a) let a dwelling which at the commencement of the lease is –
 - (i) in a condition reasonably fit for the purpose for which it is let; and

- (ii) in a condition which does not contravene the provisions of the Act, these Regulations or any other law;
- (b) keep and maintain the dwelling in compliance with the lease or any other law;
- (c) provide all services agreed to in the lease during the terms of the lease;
- (d) effect repairs for which the landlord is responsible under the lease and as identified during inspections by the landlord or on receipt of a notice from a tenant to do such repairs: Provided that unless the lease makes provision to the contrary, the landlord shall not be liable for repairs if the tenant, his or her household or *bona fide* visitors brought about the state of disrepair; and
- (e) effect repairs as soon as is reasonably possible having regard to the nature of the repair but not exceeding 30 days of the inspection or notice contemplated in paragraph (d) or such further period as may be agreed to between the landlord and tenant.

Reconstruction, refurbishment, conversion or demolition

5. (1) A landlord may only –
- (a) request a tenant to vacate the dwelling if any repairs, conversions or refurbishment are urgently necessary and cannot be properly made while the tenant remains in occupation;
 - (b) cancel the lease and repossess the dwelling, without being liable for damages in terms of the lease, the Act, these Regulations or any other law, in circumstances where the dwelling is in a dilapidated condition or cannot safely be inhabited and must as a result thereof be rebuilt, reconstructed or demolished.
- (2) In the circumstances contemplated in paragraph (a) of subregulation (1), the landlord must –
- (a) allow the tenant remission of rental for the period during which the tenant is not in occupation;
 - (b) effect the repairs, conversion or refurbishment within a reasonable time so as to cause the tenant as little inconvenience as possible; and
 - (c) ensure that the tenant is able to return to the dwelling as soon as possible after the completion of the repairs, conversion or refurbishment.
- (3) Where the repairs, conversion or refurbishment are necessary only to a part of the dwelling and the tenant continues to occupy the remaining part, the tenant shall be entitled to a remission in rental, the amount of which shall be proportionate to the extent of the tenant's deprivation.

- (4) If a tenant, having been requested to vacate the dwelling, does not do so, the tenant shall have no claim against the landlord for injuries suffered while the dwelling is being repaired, converted or refurbished.
- (5) When requested by the landlord to vacate the dwelling for the purposes of urgent and necessary repairs, conversions or refurbishment, the tenant may not cancel the lease unless –
 - (a) the temporary unfitness of the dwelling is unsafe to the tenant; or
 - (b) the repairs, conversion or refurbishment could reasonably have been foreseen by the landlord at the time when the lease was entered into.

Eviction

6. (1) No tenant shall be evicted from his or her dwelling without an order of court.
- (2) A tenant evicted from the whole or part of the dwelling by a third person shall, subject to the common law, have a claim for damages against the landlord.

Entry

7. (1) A landlord may only enter a dwelling on reasonable notice –
 - (a) to inspect the dwelling;
 - (b) to make repairs to the dwelling;
 - (c) to show the dwelling to a prospective tenant, purchaser, mortgagee or its agents;
 - (d) to inspect the dwelling for damages as contemplated in Regulation 5(2) or upon notification by the landlord or the tenant of the intention to terminate the lease;
 - (e) if the dwelling appears to be abandoned by the tenant; or
 - (f) pursuant to a court order.
- (2) A tenant must allow a landlord to enter a dwelling for the purposes set out under subregulation (1) provided that such entry is carried out at reasonable times.

Municipal services

8. (1) A landlord who is obliged by law or in terms of the express or implied term of the lease to provide services to a tenant must –

- (a) provide such services;
- (b) not cause the non-supply or interrupted supply of a service to a dwelling without a court order, except –
 - (i) in an emergency; or
 - (ii) after reasonable notice to the tenant to do maintenance, repairs or renovations:

Provided that the services are resumed as soon as reasonably possible after such emergency, maintenance, repairs or renovations;

- (c) not expose a tenant to the risk of the interruption or loss of services by withholding payment to the service provider when such payment becomes due: Provided that the tenant has made payment to the landlord in respect of the amounts due for such services;
 - (d) not charge a tenant for more than the exact services consumed in the tenant's dwelling if such dwelling is separately metered; and
 - (e) not fail to comply with any regulation, by-law or any other law regarding the amount to be charged to a tenant for services, if any, if a dwelling is not separately metered for services.
- (2) If a dwelling is separately metered for services and payment must be made directly to the landlord, the landlord must provide the tenant with a monthly statement which must contain at least the following information:
- (a) the names of both the landlord and the tenant as well as the physical address of the dwelling;
 - (b) the name, address and telephone number of each service provider;
 - (c) the previous and current months' meter readings;
 - (d) the actual consumption for each service and the amounts charged therefor;
 - (e) the total payment due;
 - (f) the date of the next meter reading for each service; and
 - (g) the amount of any arrears.
- (3) A landlord must issue a receipt to a tenant upon payment by the tenant for services.

Refund of deposit

9. In the event of termination of the lease agreement, a landlord who has, in terms of the Act, received an amount as deposit from the tenant, is required –
- (a) to refund the amount of the deposit; and
 - (b) to refund all interest that has accumulated on the amount of the deposit to the tenant:

Provided that the landlord shall be entitled to withhold a reasonable amount from the deposit money as costs for repairing any damage caused to the leased property or for replacement of lost keys, and the tenant shall be entitled to receive proof of such costs.

General provisions

10. (1) A landlord may not –
- (a) intimidate, discriminate or retaliate against a tenant for exercising any right under the Act, these Regulations or any other law;
 - (b) preclude a tenant from establishing or being a member of a tenants committee or any similar body;
 - (c) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or sent by the tenant;
 - (d) engage in oppressive or unconscionable conduct;
 - (e) fail to comply with the Tribunal complaint procedures or any agreement concluded with the Tribunal or with the tenant through the Tribunal's complaint procedures;
 - (f) conduct any activity which unreasonably interferes with or limits the rights of the tenant or which is expressly prohibited under the lease, the Act and these Regulations or any other law; and
 - (g) induce the tenant to waive his or her rights under the Act, these Regulations or any other law, or to withdraw from proceedings before the Tribunal.
- (2) A tenant may not –
- (a) cede his or her rights, assign his or her obligations or sublet the dwelling or any part thereof to any other person without the written consent of the landlord;
 - (b) allow more than the maximum number of persons specified by the landlord to reside in the dwelling;

- (c) intimidate, discriminate or retaliate against a landlord for exercising any right under the Act, these Regulations or any other law;
 - (d) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or sent by the landlord;
 - (e) engage in oppressive or unconscionable conduct;
 - (f) fail to comply with the Tribunal complaint procedures or any agreement concluded with the Tribunal or with the landlord through the Tribunal's complaint procedures;
 - (g) conduct any activity which unreasonably interferes with or limits the rights of other tenants or which is expressly prohibited under the lease, the Act and these Regulations or any other law;
 - (h) cause or permit any nuisance upon the dwelling; and
 - (i) induce a person to waive his or her rights under the Act, these Regulations or any other law, or to withdraw from proceedings before the Tribunal.
- (3) These Regulations shall prevail where there is a conflict between a lease and these Regulations.

Short title

11. These Regulations shall be called the Unfair Practices Regulations, 2003.

PROVINCIAL NOTICE

[No. 153 of 2003]

PROCEDURAL REGULATIONS

I, SL Tsénoli, Member of the Executive Council of the Province responsible for Local Government and Housing, under section 15(2) of the Rental Housing Act, 1999 (Act No. 50 of 1999), after consultation with the portfolio committee of the Provincial Legislature responsible for housing matters, hereby make the Regulations as contained in the Schedule.

SCHEDULE

Definitions

1. In these Regulations, a word or expression to which a meaning has been assigned by the Act, shall have the same meaning, unless the context otherwise indicates, and –

“**complainant**” means a person who lodges a complaint with the Tribunal, and the complaint falls within the jurisdiction of the Tribunal;

“**mediation**” means a voluntary process in terms of which a Tribunal member or a nominee of the Tribunal assists parties to resolve a dispute;

“**party**” means a person who is participating in mediation or any other dispute resolution mechanism provided by the Tribunal;

“**register**” means the register contemplated in section 13(8) of the Act;

“**respondent**” means a person against whom a complaint has been lodged with the Tribunal;

“**the Act**” means the Rental Housing Act, 1999 (Act No. 50 of 1999);

“**Tribunal**” means a Rental Housing Tribunal established in terms of section 7 of the Act; and

“**unfair practices regulations**” means the unfair practices regulations made under section 15(1)(f) of the Act.

Filing complaints

2. (1) A complaint by a tenant or landlord or group of landlords or tenants or interest group concerning an unfair practice as contemplated in the Act or the unfair practices regulations, must be made in the form of Form A in the Annexure.

- (2) A complaint must be filed –
 - (a) by mail;
 - (b) at the relevant Rental Housing Information Office within the jurisdiction of the local authority in which the dwelling is situated;
 - (c) at the office of the Tribunal; or
 - (d) by facsimile.

Jurisdiction

3. (1) A complaint will be considered to be within the Tribunal's jurisdiction if it concerns a dwelling situated within the Province.
- (2) If the complaint is not within the jurisdiction of the Tribunal, the complainant must be –
 - (a) notified in writing within thirty (30) days of receipt of such complaint that the Tribunal does not have jurisdiction;
 - (b) advised that he or she may within thirty (30) days of such notification make a request for the Tribunal to review its decision on jurisdiction; and
 - (c) where possible be referred within thirty (30) days of receipt of a complaint to another authority which may be able to assist.

Investigation

4. (1) The following steps must be taken in respect of any complaint lodged that falls within the jurisdiction of the Tribunal:
 - (a) a file must be opened and a file reference number be allocated to the complaint;
 - (b) the particulars of the dwelling to which the complaint refers must be listed in the register and a reference number must be allocated to the complaint;
 - (c) the complainant must be provided with an acknowledgement of receipt containing the reference number;
 - (d) the Tribunal must conduct such preliminary investigations as may be necessary to establish whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice, and may for this purpose obtain any additional information required to provide a full and complete description of the matter from either the complainant or the respondent alleged to have engaged in an unfair practice regarding the complaint;

- (e) the Tribunal must give the respondent an opportunity to respond to allegations before considering the complaint;
- (f) the complaint must be considered with regard to all the information received;
- (g) if necessary an inspector must compile a formal report, after inspecting the dwelling in respect of which the complaint was lodged.

Resolution of disputes

5. (1) If the Tribunal determines that the complaint does not relate to a dispute in respect of a matter which may constitute an unfair practice or that no relief could be provided, the Tribunal must –
- (a) notify the complainant in writing within thirty (30) days of such determination that the Tribunal intends not to take action or request the complainant to make representations before making a final decision;
 - (b) if possible refer the complainant to another authority which may be able to assist; and
 - (c) record the disposition and closure of the matter in the register.
- (2) If a matter is not dismissed or disposed of as provided for in (1) above, the Tribunal shall, following the preliminary investigation, make a formal determination that a dispute exists and inform the parties within thirty (30) days in writing of its determination.
- (3) Once it has been determined that a dispute exists, the complaint must be resolved either through mediation as contemplated in section 13(2)(c) of the Act, or through a formal hearing as contemplated in section 13(2)(d) of the Act.
- (4) Mediation and/or a formal hearing must be conducted in a language that is comprehended by all the parties concerned and for this purpose the services of an interpreter must be provided, if necessary.

Mediation

6. (1) When the Tribunal is of the view that a dispute may be resolved through mediation, it may appoint a mediator, which may be a member of the Tribunal, a member of staff or any person deemed fit and proper by the Tribunal, with a view to resolving the dispute.
- (2) A mediation hearing shall only proceed once the agreement to mediate in the form of Form A in the Annexure has been entered into between the relevant parties.

- (3) The mediation process shall be conducted as follows:
- (a) the mediator shall explicitly discuss the issue of confidentiality with the parties prior to the commencement of any mediation. If a party request that information be kept confidential either during the course of the mediation or afterwards, and the other parties agree to mediate under those terms, the explicit provisions of the confidentiality agreement shall be made part of the mediation agreement;
 - (b) the mediator shall at the outset inform the parties that he or she merely acts as a facilitator in trying to resolve the dispute between them and that the decision to be arrived at will be the decision of the parties and not his or her decision;
 - (c) the mediator will also inform the parties involved that the mediation process will be conducted as follows:
 - (i) each party will be given an opportunity of outlining their case;
 - (ii) each party can at any stage of the proceeding recess into a caucus;
 - (iii) if the other party does not have any objection, the mediator shall attend the caucus meeting and may make suggestions and proposals; and
 - (iv) if the party in a caucus does not have any objection, the mediator shall convey any proposal, attitude or indication or suggestion stemming from a caucus meeting to the other party;
 - (d) the mediator shall conduct mediation only in those disputes in which he or she is impartial with respect to all the parties and the subject matter of the dispute;
 - (e) the mediator shall disclose to all parties all actual or potential conflicts of interest;
 - (f) the mediator shall not conduct mediation unless the parties, after being informed of any actual or potential conflict, give their consent and the mediator determines that the conflict is not so significant as to cast doubt on the integrity of the process or himself or herself; and
 - (g) if at any time the mediator believes that any party to mediation is unable to understand and participate fully in the proceedings due to mental impairment, emotional disturbance, language barriers or other reasons, the mediator shall limit the scope of the mediation to a level consistent with the parties' ability to participate and/or make a recommendation that the party may obtain appropriate assistance in order to continue with the process or terminate the mediation process.

- (4) The mediator must attempt to obtain testimony or documents voluntarily which he or she determines is necessary, from a person who is not party to the mediation and record all efforts made to obtain the information in the file.
- (5) If the required testimony or documentation cannot be obtained voluntarily, the mediator may issue a summons in the form of Form B in the Annexure.
- (6) The issuance of the summons shall first be authorised by the Tribunal.
- (7) A mediation process must be completed within thirty (30) days of the appointment of the mediator. If however this is not possible, then the process may be extended beyond the thirty (30) day period with the consent of the Tribunal.
- (8) If the parties cannot reach agreement through mediation, the matter must be referred to the Tribunal for a formal hearing and ruling in terms of section 13(3), (4), (5), (6) and (12) of the Act.
- (9) The parties may not be coerced in any manner to reach agreement. If the mediation results in an agreement it shall be put in writing and signed by all parties and the mediator and recorded in the register. Before requesting the parties to sign the agreement, the mediator must ensure that each party fully understands the agreement and is entering into it voluntarily.
- (10) If the mediation does not result in an agreement, the mediator shall, for the purposes of a formal hearing by the Tribunal, prepare a report summarising the evidence, and make a recommendation as to whether the evidence shows that there has been a violation of the unfair practices regulations.
- (11) If any party to a dispute which was resolved by an agreement reached through mediation alleges that the other party has failed to comply with the agreement, that party may seek relief by reporting the allegations to the Tribunal.
- (12) Upon receipt of a report alleging failure to comply with an agreement the Tribunal shall conduct an investigation into such allegations to determine whether the terms of the agreement are being adhered to.
- (13) If such allegations are found to be true, the Tribunal shall make such a ruling as it considers just and fair.

Powers, duties and functions of inspectors and Tribunal staff

7. (1) All inspectors appointed in terms of section 11 of the Act shall have the following powers, duties and functions, to –
 - (a) conduct routine building inspections and provide written inspection reports when requested to do so by the Tribunal or the mediators;
 - (b) trace and contact property owners from information held by the Registrar of Deeds;

- (c) hold consultations with complainants and respondents and record all the information received;
- (d) obtain sworn statements from disputing parties and other parties concerned;
- (e) give evidence before the Tribunal when requested to do so;
- (f) obtain or examine copies of all books and documents which may be relevant to a case;
- (g) contact any local authority to determine the amount of arrears in rates and taxes owed in respect of a dwelling;
- (h) investigate the legal status of residents when illegal subletting is alleged to be occurring;
- (i) deliver notices and other documentation to the relevant parties involved in a dispute;
- (j) obtain copies of all receipts in respect of a dwelling which is the subject of a complaint;
- (k) obtain from any Rental Housing Information Office established under the Act, any reports concerning enquiries and complaints received as contemplated under section 13(3)(a) of the Act;
- (l) provide any information and produce any report and other documents concerning an inspection conducted, which may have bearing on any complaint;
- (m) serve summons on a party by handing a true copy to such person personally or where such person could not be found, by handing a true copy to a person apparently above the age of 16 years and apparently residing at the place of residence or employed at the place of employment of the therein named person or business of the person therein named, who, in the Tribunal's opinion may be able to provide any information concerning a complaint, to appear before the Tribunal as contemplated in section 13(3)(e) of the Act and to produce any book, any other document or object as the Tribunal may determine;
- (n) assist the Technical Advisor in conducting any preliminary inquiry to provide a complete record of all relevant information acquired through inspections and investigations;
- (o) submit applications to a Magistrate's Court to prosecute when instructed by the Tribunal to do so;

- (p) deliver written recommendations of the Tribunal to parties against whom action will be taken for non-compliance with unfair practices regulations; and
 - (q) do anything in the reasonable execution of functions and duties required by the Act or the Tribunal.
- (2) All Technical Advisors and administrative support staff appointed in terms of section 11 of the Act shall have the following powers, functions and duties:
- (a) receive written complaints, open files and enter the cases in the registers;
 - (b) review complaints and screen cases in respect of the jurisdiction of the Tribunal and advise complainants accordingly in writing;
 - (c) conduct preliminary investigation;
 - (d) keep records concerning the status of matters and their outcomes;
 - (e) receive and carry out the instructions of the Tribunal and prepare the necessary documentation for the Tribunal;
 - (f) schedule mediation hearings and notify parties about the place, date and time of such hearings in writing; and
 - (g) record proceedings on mediation hearings.

Short title

8. These Regulations shall be called the Rental Housing Tribunal Procedural Regulations, 2003.