

# The History of Residential Rental Legislation Rent Control Act, 1976 Rent Control Amendment Act, 1989 Rental Housing Act, 1999 Rental Housing Amendment Act, 2007 Rental Housing Amendment Act 35 of 2014

7



8

# define the responsibility of Government in respect of rental housing property; to make provision for the establishment of Rental Housing Tribunals; to define the functions, powers and duties of such Tribunals; to lay down general principles governing conflict resolution in the rental housing sector; to provide for the facilitation of sound relations between tenants and landlords and for this purpose to lay down general requirements relating to leases;





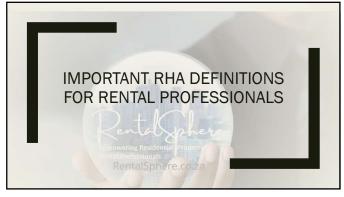
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# Most Acts have associated regulations Usually the Act will task the appropriate national Minister to develop regulations to give practical effect to the requirements of the Act The Act = the 'skeleton' and the regulations = 'the meat on the bones' OR The Act say WHAT must be done and the Regs say HOW









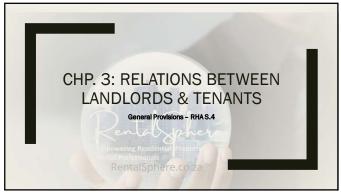
## Important RHA Definitions for Rental Professionals

- "dwelling", includes any house, hostel room, hut, shack, flat, apartment, room, outbuilding, garage or similar structure which is leased, as well as any storeroom, outbuilding, garage or demarcated parking space which is leased as part of the lease;
- "landlord" means the owner of a dwelling which is leased and includes his or her duly authorised agent or a person who is in lawful possession of a dwelling and has the right to lease or sublease it;
- "periodic lease" means a lease for an undetermined period, subject to notice of termination by either party;

17

## Important RHA Definitions for Rental Professionals

- "this Act" includes any regulation;
- "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**



## Chp. 3: Relations between Tenants & Landlords > General Provisions Discrimination Tenant's Rights Landlord's Rights

20

# Chp. 3: Relations between Tenants & Landlords > General Provisions Discrimination - RHA s.4(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 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.

### Chp. 3: Relations between Tenants & Landlords > General Provisions

- Tenant's Rights RHA s.4(2)-4(4)
  - Right to privacy
  - Right not to have
    - his or her person or home searched
    - his or her property searched
    - 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
    - the privacy of his or her communications infringed

22

### Chp. 3: Relations between Tenants & Landlords > General Provisions

- Landlord's Rights RHA s.4(5)/contd.
- Right to:
  - prompt and regular payment of a rental or any charges that may be payable in terms of a lease
  - recover unpaid rental or any other amount that is due and payable after obtaining a ruling by the Tribunal or an order of a court of law
  - terminate the lease in respect of rental housing property on grounds that do not constitute an unfair practice and are specified in the lease;

23

## Chp. 3: Relations between Tenants & Landlords > General Provisions

- Landlord's Rights RHA s.4(5)/contd.
- Right to:
  - on termination of a lease to
    - receive the rental housing property in a good state of repair, save for fair wear and tear; and
    - repossess rental housing property having first obtained an order of court; and
    - claim compensation for damage to the rental housing property
      or any other improvements on the land on which the dwelling
      is situated, if any, caused by the tenant, a member of the
      tenant's household or a visitor of the tenant



# Chp. 3: Relations between Tenants & Landlords > Provisions Pertaining to Leases Defines what constitutes a valid lease (refer \$5(1)-5(2)) Non-negotiable lease terms & conditions (refer \$5(3)) These terms apply to ALL lease agreement whether verbal or written, and whether they are actually included in the written lease or not! (refer \$5(4)) We'll be looking in detail at the requirements re: Deposits Inspections Information that must be included in a written lease (refer \$5(6))





#### **Deposits**



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 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: Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act;

RHA S 5(3)(d)

29

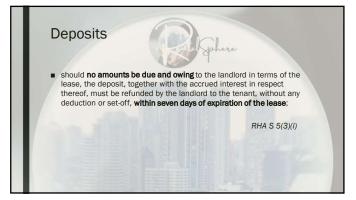
#### **Deposits**



 on the expiration of the lease, the landlord may apply such deposit and interest towards the payment of all amounts for which the tenant is liable under the said lease, including the reasonable cost of repairing damage to the dwelling during the lease period and the cost of replacing lost keys and the balance of the deposit and interest, if any, must then be refunded to the tenant by the landlord not later than 14 days of restoration of the dwelling to the landlord

RHA S 5(3)(g)







# The Ingoing Inspection the tenant and the landlord must jointly, before the tenant moves into the dwelling, inspect the dwelling to ascertain the existence or not of any defects or damage therein with a view to determining the landlord's responsibility for rectifying any defects or damage or with a view to registering such defects or damage, as provided for in subsection (7); RHA S 5(3)(e)

34

# Interim Inspections A tenant has the right, during the lease period, to privacy, and the landlord may only exercise his or her right of inspection in a reasonable manner after reasonable notice to the tenant. RHA S 5(4)(2)

35

# The Outgoing Inspection at the expiration of the lease the landlord and tenant must arrange a joint inspection of the dwelling at a mutually convenient time to take place within a period of three days prior to such expiration with a view to ascertaining if there was any damage caused to the dwelling during the tenant's occupation thereof; RHA S 5(3)(f)

Importance of Ingoing	8 (	Dutgoii	٦Ę
Inspections	del	sphere	

■ failure by the landlord to inspect the dwelling in the presence of the tenant as contemplated in paragraphs (e) or (f) is deemed to be an acknowledgement by the landlord that the dwelling is in a good and proper state of repair, and the landlord will have no further claim against the tenant who must then be refunded, in terms of this subsection, the full deposit plus interest by the landlord;

RHA S 5(3)(j)

37

## What Happens if the Tenant Doesn't Attend the Exit Inspection?

should the tenant fail to respond to the landlord's request for an inspection as contemplated in paragraph (f), the landlord must, on expiration of the lease, inspect the dwelling within seven days from such expiration in order to assess any damages or loss which occurred during the tenancy;

RHA S 5(3)(k)

38

## What Happens if the Tenant Doesn't Attend the Exit Inspection?

- the landlord may in the circumstances contemplated in paragraph (k), without detracting from any other right or remedy of the landlord, deduct from the tenant's deposit and interest the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys;
- the balance of the deposit and interest, if any, after deduction of the amounts contemplated in paragraph (1), must be refunded to the tenant by the landlord not later than 21 days after expiration of the

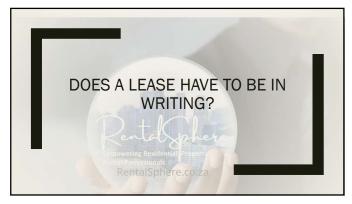
RHA S 5(3)(I&m)

## What Happens if the Tenant Doesn't Attend the Exit Inspection?

 the relevant receipts which indicate the costs which the landlord incurred, as contemplated in paragraph (I), must be available to the tenant for inspection as proof of such costs incurred by the landlord;

RHA S 5(3)(n)

40



41

### Does a lease have to be in writing?

(1) A lease between a tenant and a landlord, subject to subsection (2), need not be in writing or be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act 18 of 1969).

Is there any exception to this rule? If so, what is it?

 $\ensuremath{(2)}$  A landlord must, if requested thereto by a tenant, reduce the lease to writing.



### Other Provisions Pertaining to the Lease

S5(3)A lease will be deemed to include terms, enforceable in a competent court, to the effect that—

(a) the landlord must furnish the tenant with a **written receipt** for all payments received by the landlord from the tenant;

(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;

44

### Other Provisions Pertaining to the Lease

should the tenant vacate the dwelling before expiration of the lease, without notice to the landlord, the lease is deemed to have expired on the date that the landlord established that the tenant had vacated the dwelling but in such event the landlord retains all his or her rights arising from the tenant's breach of the lease;

RHA S 5(3)(0)

Other Provisions Pertaining to	the Lease
<ul> <li>any costs in relation to contract of lease shall only tenant upon proof of factual expenditure by the lar</li> </ul>	
	RHA S 5(3)(p)

### Other Provisions Pertaining to the Lease

- S5(4) The standard provisions referred to in subsection (3) may not be waived by the tenant or the landlord.
- SS (5) If on the expiration of the lease the tenant remains in the dwelling with the express or tacit consent of the landlord, the parties are deemed, in the absence of a further written lease, to have entered into a periodic lease, on the same terms and conditions as the expired lease, except that at least one month's written notice must be given of the intention by either party to terminate the lease.

47

### Other Provisions Pertaining to the Lease

- S5(7) A **list of defects** registered in terms of subsection (3)(e) must be attached as an annexure to the lease as contemplated in subsection (2)
- (8) A copy of any House Rules applicable to a dwelling must be attached as an annexure to the lease.





# ■ Each province should establish a tribunal (RHT) ■ RHT Complaint Procedure - Step #1: LL or T lodges complaint w/ tribunal - Step #2: RTH conducts preliminary investigations to determine if complaint relates to an unfair practice - Step #3: Mediation (optional – if RHT believe dispute can be resolved by mediation) - Step #4: RHT Hearing

### Tribunal Hearings

- RHT can summon any LL, T or other person to attend hearing
- The Tribunal has a list of factors that must be taken into account when ruling
- Refer S13(4)-(6)
- Once a complaint has been lodged:
  - LL may not evict T
  - T must continue to pay rental
  - LL must effect necessary maintenance

52

### Jurisdiction of the RHT

- Essentially matter pertaining to the RHA
- Tribunal may
- Issue spoliation and attachment orders and grant interdicts
- No one is obliged to use the Tribunal can use alternatives, e.g. small claims court and magistrates court

53

#### Tribunal Rulings

- \$13(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 32 of 1944), and is enforced in terms of that Act.
- How can tan order of the Tribunal be appealed??
- \$13(14) The Tribunal does not have jurisdiction to hear applications for eviction orders.

OTHER TRAINING SERVICES		
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■ Online Courses  - RentalSphere.co.za		
<ul> <li>Rental Training Club</li> <li>10/10 - Mould in Rental Properties w/ Marisia Robus</li> <li>24/10 - Sureties / Guarantees / Co-Signatories w/ Bruno Simão</li> </ul>	l —	
- RentalSphere.co.za/RTC	l ——	
■ Rental Process Compliance Audits & Review		