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## GENERAL NOTICE

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### NOTICE 77 OF 2006

#### **NORTHERN CAPE RENTAL HOUSING UNFAIR PRACTICES REGULATIONS, 2006 and NORTHERN CAPE RENTAL HOUSING PROCEDURAL REGULATIONS, 2006**

Under the powers invested in me under Section 15(2) of the Rental Housing Act, No 50 of 1999, I, Jacobus Frederick van Wyk, MEC for Housing and Local Government make known my intention to publish the regulations as said out in the schedule hereto and hereby invite interested persons to comment on the said regulations or make any representation with regard hereto.

Input should reach the MEC for Housing and Local Government and Local Government:

Mr J F Van Wyk  
Private Bag X 5005/9 Cecil Sussman Road  
KIMBERLEY  
8300

On or by no later than 15 December 2006.

**J F VAN WYK**  
**MEC: HOUSING AND LOCAL GOVERNMENT**

**DRAFT REGULATIONS****RENTAL HOUSING ACT, 1999 (ACT NO. 50 OF 1999)****NORTHERN CAPE RENTAL HOUSING UNFAIR PRACTICES  
REGULATIONS, 2006**

The Member of the Executive Council responsible for Housing in the Province of the Northern Cape, has under section 15(1)(f) of the Rental Housing Act, 1999 (Act No. 50 of 1999), made these regulations in the schedule.

**SCHEDULE****Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have the same meaning, unless the context indicates otherwise; 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);

**"Tribunal"** means the Rental Housing Tribunal established in terms of section 7 of the Act.

***Unfair practice***

2. A failure to comply with these regulations constitutes an unfair practice as defined in section 1 of the Act.

***Disclosure***

- 3(1) Prior to the commencement of the tenancy the landlord must disclose to the tenant the landlord's name and address or in the event that the landlord is a juristic person the address of its registered office for the service of all process and receipt of all notices or demands.

- (2) The information required to be furnished in terms of subregulation (1) must be updated regularly and this subregulation extends to and is enforceable against any successor landlord.
- (3) If a landlord fails to comply with the provisions of subregulation (1), a person authorized to enter into a lease agreement on behalf of the landlord becomes an agent of the landlord for the purpose of the performance of the landlord's obligations under that lease agreement, these regulations, the Act or any other law.

### ***Eviction***

- 4(1) A tenant may only be evicted from the dwelling in terms of an order of a court of competent jurisdiction.
- (2) A tenant evicted from the whole or part of the dwelling by a third person has, subject to the provisions of the common law, a claim for damages against the landlord.

### ***Changing of locks***

- 5(1) A landlord or tenant may not change any locks affixed to any doors, gates or other access points to the dwelling concerned-
  - (a) unless it is necessary due to fair wear and tear or other reasonable causes;
  - (b) without reasonable notice of the intended change to the other party; and
  - (c) unless the other party is furnished with duplicate keys immediately upon such change of locks.
- (2) The provisions of the foregoing subregulation (1) shall not apply-
  - (a) in the event of an emergency.

***Conditions and Maintenance***

- 6(1) A lease agreement which has been reduced to writing must have stamps affixed to it and the landlord must provide a copy thereof within 21 (twenty one) days of signature thereof by both landlord and tenant.
- (2) A landlord must-
- (a) let a dwelling which at the commencement of the lease period is-
    - (i) in a condition reasonably fit for the purpose of human habitation; and
    - (ii) in a condition which is not in contravention of the provisions of the Act, these regulations, any municipal by-laws or any other law.
  - (b) keep and maintain the dwelling in accordance with all municipal by-laws, health or safety regulations, ordinances or any other law;
  - (c) during the term of the lease period provide all services agreed upon in terms of the lease;
  - (d) effect repairs which the landlord is responsible for in terms of the lease agreement, and as identified during inspections by the landlord, or on receipt of notification requesting such repairs, provided that if the lease agreement contains provisions to the contrary the landlord is not liable for such repairs if the tenant, a member of his or her household or a bona fide visitor is the cause of disrepair; and
  - (e) effect repairs as soon as is reasonably possible with due regard to the nature of the repairs but not later than 30 (thirty) days from the date of the inspection or receipt of the notice contemplated in subregulation 6(2)(d) or such further period as may be agreed to between the landlord and the tenant.
- (3) A tenant must-
- (a) use the dwelling in a proper manner and for the purpose for which it is let, and in a manner which does not contravene the provisions of the Act, these regulations, ordinances, municipal by-laws or any other law; and
  - (b) at all times during the tenancy maintain the dwelling in a clean, tidy and safe state of repair.

***Reconstruction, refurbishment, conversion or demolition***

- 7(1) A landlord may only-
- (a) request a tenant to vacate the dwelling if any refurbishments, repairs or conversions are urgently necessary and cannot be effected while the tenant remains in occupation; or
  - (b) cancel the lease and repossess the dwelling, without being liable for damages in terms of the lease, these regulations, the Act or any other law, in circumstances where the dwelling is in such a state of disrepair that it cannot be inhabited safely.
- (2) In the circumstances contemplated by subregulation 7(1)(a), the landlord must-
- (a) grant remission of rental to the tenant for the period during which the dwelling is vacant;
  - (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 only a part of the dwelling is subject to necessary repairs, conversions or refurbishment and the tenant continues to occupy the remaining part, the landlord must allow the tenant such remission in rental, the amount of which must be proportionate to the extent of the tenant's deprivation.
- (4) Where the landlord requests the tenant to vacate the dwelling for the purposes of urgent and necessary repairs, conversion or refurbishments, the lease may not be cancelled by the tenant unless-
- (a) the temporary unsuitable state of the dwelling would be detrimental to the well-being of the tenant; or
  - (b) the landlord could or should reasonably have foreseen the repairs, conversion or refurbishment at the time of entering into the lease agreement.

**Entry**

- 8(1) A landlord may only enter a dwelling on reasonable notice-
- (a) to inspect the dwelling;
  - (b) to effect repairs to the dwelling;
  - (c) to show the dwelling to a prospective tenant, purchaser, mortgagee or its agents;
  - (d) to inspect the dwelling for any damages as referred to in section 5(3)(e) and (f) of the Act or upon notification by the tenant or landlord of the intention to terminate the lease;
  - (e) if the dwelling appears to have been abandoned by the tenant;
  - (f) pursuant to an order of a court of competent jurisdiction.
- (2) A tenant may not refuse a landlord entry to a dwelling under the circumstances as set out in subregulation 8(1), provided that such entry must be carried out at reasonable times.

**Receipts**

9. A landlord must furnish a tenant with a written receipt for all payments made by the tenant to the landlord, which receipt must contain the particulars as contemplated in section 5(3)(b) of the Act.

**Municipal Services**

- 10(1) A landlord who is obliged by law or in terms of the express or implied terms of the lease agreement to provide services to a tenant, must-
- (a) provide such services;
  - (b) not levy a charge against a tenant in excess of the exact consumption of services in the dwelling if such dwelling is separately entered; and
  - (c) comply with any regulation, by-law, ordinance, law or obligation regarding the amount to be charged to a tenant for services, if any, if a dwelling is not separately metered for services.

- (2) A landlord may not interrupt the supply of electricity or gas services except-
- (a) in the event of an emergency;
  - (b) to effect maintenance, repairs or renovations after reasonable notice has been given to the tenant, provided that the services must be reinstated as soon as the maintenance, renovations or repairs are completed; or
  - (c) where the tenant is in arrears with the payment of service fees and fails, refuses or neglects to pay such arrears within 14 (fourteen) days of receipt of a notice from the landlord to do so.
- (3) 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 containing the following particulars-
- (a) the landlord and tenant's names, as well as the physical address of the dwelling;
  - (b) the name, address and telephone number of each service provider;
  - (c) the preceding and current month's meter readings;
  - (d) the actual consumption for each service and the amounts charged therefore;
  - (e) the total payment due;
  - (f) the date of the next meter reading for each service; and
  - (g) the amount of any arrears.

### ***General Provisions***

#### 11 House Rules

11(1) A landlord may make house rules pertaining to the control, administration, management, use and enjoyment of the dwelling.

(2) A house rule is enforceable against a tenant only if -

(a) it is intended to -



- (i) promote the health, safety, convenience and welfare of the tenant and that of neighbours;
- (ii) preserve the landlord's property from abuse; or
- (iii) ensure an equitable and fair distribution of services and facilities available to the tenant;
- (b) it is relevant to the purpose for which it is made;
- (c) it applies fairly to all tenants on the premises;
- (d) it clearly stipulates to the tenant which conduct is prohibited, limited or permissible;
- (e) it is not permissive of the landlord evading any obligations in terms of the lease; and
- (f) the tenant has notice of the house rule prior to entering into the lease agreement.

12(1) A landlord may not-

- (a) intimidate, discriminate or retaliate against a tenant for exercising any right acquired under the provisions of the Act, these regulations or any other law;
- (b) preclude a tenant from establishing or being a member of a tenant's committee or similar body;
- (c) make a false representation regarding the official nature of any document or refuse to accept any notice lawfully presented or served by the tenant;
- (d) engage in oppressive or unreasonable conduct towards the tenant;
- (e) fail to comply with the Tribunal complaints 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, in terms of the provisions of the Act, these regulations, any ordinances, municipal by-laws or any other law; and

- (g) induce a person to waive his or her rights acquired under the provisions of 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 having obtained the prior written consent of the landlord, which in the case of subletting may not be unreasonably withheld;
  - (b) allow more than the maximum number of persons specified by the landlord, in the lease agreement, to reside in the dwelling;
  - (c) intimidate, discriminate or retaliate against a landlord for exercising any right acquired under the provisions of the Act, these regulations or any other law;
  - (d) engage in oppressive or unreasonable conduct towards the landlord;
  - (e) fail to comply with the Tribunal complaints procedures or any agreement concluded with the Tribunal or with the landlord through the Tribunal's complaint procedures;
  - (f) conduct any activity which unreasonably interferes with or limits the rights of other tenants or which is expressly prohibited under the lease, in terms of the provisions of the Act, these regulations, any ordinances, municipal by-laws or any other law;
  - (g) cause or permit any nuisance upon the dwelling; and
  - (h) induce the landlord or any other person to waive his or her rights acquired under the provisions of the Act, these regulations or any other law, or to withdraw from proceedings before the Tribunal.
- (3) Any person who commits an unfair practice or contravenes any other regulation made in terms of the Act is guilty of an offence and liable on conviction to a fine or a period of imprisonment not exceeding two years or to both such fine and such imprisonment.

***Short title and commencement***

12. These regulations are called the Northern Cape Rental Housing Unfair Practices Regulations, 2006.



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**DRAFT REGULATIONS****RENTAL HOUSING ACT, 1999 (ACT NO. 50 OF 1999)****NORTHERN CAPE RENTAL HOUSING PROCEDURAL  
REGULATIONS, 2006**

The Member of the Executive Council responsible for Housing in the Province of the Northern Cape, has under section 15(1)(f) of the Rental Housing Act, 1999 (Act No. 50 of 1999), made these regulations in the schedule.

**SCHEDULE****Definitions**

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

<b>"complainant"</b>	means a person who lodges a complaint with the Tribunal;
<b>"mediation"</b>	means a voluntary process in terms of which a Tribunal member, a member of staff or a person nominated by the Tribunal assists parties to resolve a dispute;
<b>"party"</b>	means a person who is participating in mediation, a hearing or any other dispute resolution mechanism;
<b>"register:"</b>	means the register contemplated in section 13(8) of the Act;
<b>"respondent"</b>	means a person against whom a complaint has been lodged with the Tribunal;
<b>"the Act"</b>	means the Rental Housing Act, 1999 (Act No. 50 of 1999);
<b>"Tribunal"</b>	means the 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.

**Jurisdiction**

2. The Tribunal has jurisdiction in the whole of the Northern Cape Province.

**Lodging of Complaints**

- 3(1) A tenant or landlord or groups of tenants or groups of landlords or other interest group may lodge a complaint in writing with the Tribunal concerning an alleged unfair practice contemplated in the Unfair Practices Regulations or a contravention of a provision of the Act.
- (2) Complaints which must be on a form similar to that appearing in Annexure "A" to these regulations, must be lodged-
- (a) by mail or facsimile transmission to the office of the Tribunal and confirmation of successful transmission of the facsimile will serve as proof of receipt of complaint; or
  - (b) at the relevant Rental Housing Information Office contemplated in section 14 of the Act; or
  - (c) in person at the office of the Tribunal.

***Receipt of complaints and subsequent investigation***

- 4(1) The following steps must be taken in respect of any complaint received by the Tribunal-
- (a) a file must be opened subsequent to which a reference number be allocated to the complainant;
  - (b) the particulars of the dwelling referred to in the complaint must be listed in the register provided for in section 13(8) of the Act;
  - (c) the complainant must be furnished with an acknowledgement of receipt containing the reference number of the complaint;
  - (d) the Tribunal must conduct such preliminary investigations and enquiries as may be necessary to determine whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice, and for this purpose may obtain any such additional information



required to provide a full and complete description of the matter from either the complainant or respondent or any other relevant party;

- (e) if it is deemed necessary, the Tribunal may instruct an inspector to compile a report on the complaint;
- (f) the Tribunal may in its discretion however require the inspector to inspect the property first before a report is compiled by the inspector as provided for in subregulation 3(1)(e) above;
- (g) within 30 (thirty) days of receipt of the complaint, the Tribunal must determine, as contemplated in section 13(2)(b) of the Act whether the complaint relates to a dispute in respect of a matter which may constitute an unfair practice; and
- (h) a determination referred to in subregulation 3(1)(g) above must be recorded in accordance with the provision of subregulation 3(1)(a).

#### **Determination that no dispute exists**

- 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 and as a consequence it is unable to provide relief, the Tribunal must-
- (a) notify the complainant within 30 (thirty) days of its determination;
  - (b) if possible, refer the complainant to a body or institution which is competent to deal with the matter;
  - (c) record the disposal and consequent closure of the matter in the register.

#### **Determination that dispute exists**

- 6(1) If the Tribunal determines that the complaint does relate to a dispute in respect of a matter which may constitute an unfair practice, the Tribunal must-
- (a) determine further whether in its opinion such dispute may be satisfactorily resolved through mediation or whether the dispute is of such a serious nature that it may only be resolved through convening a formal hearing as contemplated in section 13(2)(d) of the Act.;

- (b) cause its further determination referred to in subregulation 5(1)(a) above to be recorded in the register and inform the parties, within 30 (thirty) days, in writing of its determination;
- (c) if it has determined that the dispute may be resolved through mediation, appoint a mediator as provided for in terms of section 13(2)(c) of the Act and inform the parties, in writing, accordingly; and
- (d) if it has determined that the dispute may only be resolved by convening a formal hearing as provided for in terms of section 13(2)(d), convene such hearing and inform the parties, in writing, accordingly.

### **Mediation**

- 7(1) If the Tribunal is of the opinion that a dispute may be resolved through mediation, it must appoint a mediator in terms of section 13(2)(c) of the Act.
- (2) A mediator must, after being appointed as such-
  - (a) Inform the parties in writing-
    - (i) that the mediation may not proceed until an agreement similar in form to that appearing in Annexure "B" to these regulations has been entered into by and between the parties; and
    - (ii) that the parties must be present before him or her at a specified time and date for the purpose of concluding the agreement provided that the date so specified must not be later than 14 (fourteen) days after the date of appointment of the mediator.
  - (b) Issue a certificate as contemplated in section 13(2)(d) of the Act in the event that the parties are unable to resolve the dispute through mediation.
- (3) If the parties have agreed to refer the dispute for mediation, the mediation process must be conducted as follows-
  - (a) Prior to the commencement of any mediation proceeding, the mediator must discuss with the parties the issue of confidentiality. If any party requests that information be kept confidential either during the course of mediation or subsequent thereto, and the other parties agree to mediate under these terms, such agreement must be incorporated into the mediation agreement.



- (b) The mediator must at the outset inform the parties that he or she merely acts as a facilitator in the dispute and that the ultimate decision will be that of the parties and not that of the mediator.
  - (c) The mediator must further inform the parties that the actual mediation process will be conducted as follows-
    - (i) each party will be given an opportunity to make a statement of case;
    - (ii) at any stage during mediation may any party request a recess in order to caucus or confer in another room or office;
    - (iii) if the other party does not object, the mediator may attend the caucus and be of assistance by making suggestions and proposals, and
    - (iv) if the party in caucus does not object, then the mediator must convey to the other party any proposal, attitude, indication or suggestion stemming from the caucus.
  - (d) It will only be prudent for the mediator to mediate in those disputes in which he or she can be impartial with respect to all of the parties, as well as the matter forming the subject of the dispute.
  - (e) If at any time during the mediation proceedings, the mediator is of the opinion that a party to the proceedings is unable to comprehend and participate fully due to mental impairment, emotional disturbance, intoxication, language barriers or other consideration, the mediator must-
    - (i) limit the scope of the mediation to a level commensurate with the party's ability to participate;
    - (ii) recommend that the party seeks appropriate assistance in order to pursue the mediation process further; or
    - (iii) terminate, adjourn or postpone the mediation whichever is appropriate under the circumstances.
- (4) The mediator must endeavour to obtain testimony, records or documents, which the mediator deems necessary, from a person not a party to the proceeding, which preferably must be volunteered by such other party. The mediator must record all attempts and efforts to procure the documents or testimony in the file.

- (5) Mediation must be completed within 30 (thirty) days from the date of commencement thereof. If however, this is not possible, then the process may be extended beyond the 30 (thirty) days period only with the consent of the Tribunal.
- (6) If the mediation is unsuccessful, the dispute must be referred to the Tribunal for a formal hearing in terms of section 13(3), (4), (5), (6) and (12) of the Act.
- (7) No party may in any manner be coerced to reach agreement. If the mediation results in agreement it must be reduced in writing and signed by all parties, as well as 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 its consequences and entering into it voluntarily.

#### **Powers, duties and functions of Tribunal staff**

- 8(1) In terms of section 11 of the Act, the Tribunal staff must perform and exercise the following functions and powers-
  - (a) conduct routine building inspections and provide written inspection reports when requested to do so by the Tribunal;
  - (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) procure or examine copies of all books and documents which may be relevant to a case;
  - (g) contact any municipality to determine the arrears status of a municipal services account in respect of a dwelling;
  - (h) deliver notices and other documentation to the relevant parties involved in a dispute;





- (i) procure copies of all relevant receipts in respect of a dwelling which is the subject of a complaint;
- (j) obtain from a Rental Housing Information Office, established in terms of the Act, any reports concerning inquiries and complaints received in terms of section 13(3)(a) of the Act;
- (k) provide any information and produce any report or documents concerning an inspection conducted, which may have bearing on a complaint;
- (l) serve summons on a party to a dispute or any other person who may reasonably be in a position to provide information material to a complaint, to appear before the Tribunal in terms of section 13(3)(e) of the Act and to produce any book or any other document as the Tribunal may require;
- (m) assist the Tribunal in conducting any preliminary enquiry to provide a complete record of all relevant information acquired as a result of inspections and investigations;
- (n) submit applications to a Magistrate's Court to prosecute when instructed by the Tribunal to do so;
- (o) deliver written recommendations of the Tribunal to parties against whom action will be taken for non-compliance with unfair practices regulations;
- (p) do anything in the reasonable performance and exercise of functions and powers required by the Act or the Tribunal;
- (q) receive written complaints, open files and enter complaints in the register;
- (r) review complaints and vet such complaints and advise complainants accordingly in writing;
- (s) keep records of the status of progress in matters and their outcomes;
- (t) receive and execute the instructions of the Tribunal and prepare the necessary documentation for the Tribunal;
- (u) schedule mediation and Tribunal hearings and notify parties about the

- place, date and time of such hearings in writing; and
- (v) record proceedings in mediation and Tribunal hearings.

**Short title and commencement**

9. These regulations are called the Northern Cape Rental Housing Procedural Regulations, 2006.
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