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THE PRESIDENCY

No. 876

5 November 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 35 of 2014: Rental Housing Amendment Act, 2014



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‘maintenance’ includes such repairs and upkeep as may be required to ensure that a dwelling is in a habitable condition, and ‘maintain’ has a corresponding meaning;”;

- (d) by the substitution for the definition of “Minister” of the following definition:
“ **‘Minister’** means the Minister of [**Housing**] Human Settlements;”;
- and
- (e) by the substitution for the definition of “prescribed” of the following definition:
“ **‘prescribed’** means prescribed by regulation by the [**MEC, by notice in the Gazette**] Minister;”.

Insertion of section 1A in Act 50 of 1999

2. The following section is hereby inserted in the principal Act after section 1:

“Objectives of Act

1A. The objectives of this Act are to—

- (a) create mechanisms to promote the provision of rental housing property;
- (b) promote access to adequate housing through creating mechanisms to ensure the proper functioning of the rental housing market;
- (c) lay down general principles governing conflict resolution in the rental housing sector;
- (d) provide for the facilitation of sound relations between tenants and landlords; and
- (e) provide for legal mechanisms to protect the rights of tenants and landlords against illegal actions by the other party by affording speedy means of redress at minimum cost to the parties.”.

Amendment of section 2 of Act 50 of 1999

3. Section 2 of the principal Act is hereby amended by the addition of the following subsections:

“(5) The Minister must—

- (a) monitor and assess—
 - (i) the impact of the application of this Act on landlords and tenants, and more specifically the impact on poor and vulnerable tenants; and
 - (ii) the performance of Tribunals and Rental Housing Information Offices;
- (b) develop such relief measures and other social programmes as part of the policy framework on rental housing referred to in subsection (3) as he or she deems necessary to alleviate hardships that may be suffered by tenants;
- (c) develop programmes, directives and guidelines or amend or augment the policy framework on rental housing referred to in subsection (3) in such a manner as he or she sees fit, to facilitate effective performance by Tribunals and Rental Housing Information Offices; and
- (d) annually report to Parliament on the promotion of rental housing property as envisaged in sections 2 and 3.

(6) For purposes of subsection (5), the Minister may define criteria based on age, income or other form or degree of vulnerability that apply to such tenants or group of tenants and amend or augment the policy framework on rental housing, referred to in subsection (3) in such a manner as he or she sees fit.”.

Amendment of section 3 of Act 50 of 1999

4. Section 3 of the principal Act is hereby amended by the addition of the following subsections:

“(5) National Government must develop and fund programmes to train members of the Tribunals and officials appointed in terms of section 14(2).”

“(6) Provincial Government must assist local municipalities not yet on level three accreditation, in establishing Rental Housing Information Offices as contemplated in section 14.”

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Amendment of Chapter 3 of Act 50 of 1999

5. Chapter 3 of the principal Act is hereby amended by the substitution for the heading of the following heading:

“[RELATIONS BETWEEN] RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS”.

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Amendment of section 4 of Act 50 of 1999, as amended by section 2 of Act 43 of 2007

6. Section 4 of the principal Act is hereby amended by the deletion of subsections (2), (3), (4) and (5).

Insertion of sections 4A and 4B in Act 50 of 1999

7. The following sections are hereby inserted in the principal Act, after section 4:

“Rights and obligations of tenants

4A. (1) A tenant has the right to receive a written receipt from the landlord for all payments received by the landlord from the tenant, which receipt must—

- (a) be dated;
- (b) clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made;
- (c) indicate whether payment has been made for rental, arrears, deposit or otherwise; and
- (d) specify the period for which payment is made.

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(2) A tenant may request the landlord during the period of the lease to provide him or her with written proof in respect of interest accrued on the deposit paid.

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(3) Subject to section 4B(3), on the expiration of a lease, a tenant has the right to receive payment of the deposit plus any interest accrued to such deposit without any deduction or set-off, within seven days of expiration of the lease.

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(4) The tenant must, on request by the landlord, make himself or herself available to conduct a joint inspection of the dwelling at a time convenient for the landlord and tenant, with a view to ascertaining if there is any damage caused to the dwelling during the tenant’s occupation, as contemplated in section 4B(5).

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(5) A tenant has the right, during the lease period, to privacy, and should the landlord wish to exercise his or her right of inspection, the inspection must be done in a reasonable manner after reasonable notice to the tenant.

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(6) The tenant’s rights as against the landlord include his or her right not to have—

- (a) his or her person or dwelling searched;
- (b) his or her possessions searched and seized, except in terms of a law of general application and having first obtained a ruling by a Tribunal or an order of court; or
- (c) the privacy of his or her communications infringed.

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(7) The rights set out in subsection (6) apply equally to members of the tenant's household and to visitors of the tenant.

(8) A tenant is liable for rental and other costs agreed upon in the lease upon the due date, but for costs other than those agreed to in the lease, the tenant is only liable upon proof of factual expenditure by the landlord.

(9) A tenant may not sublet a dwelling without the consent of the landlord, which consent may not be unreasonably withheld.

Rights and obligations of landlords

4B. (1) A landlord may require a tenant, before moving into the dwelling, to pay a deposit which—

- (a) may not exceed an amount equivalent to an amount specified in the lease or otherwise agreed upon between the parties;
- (b) must be invested by the landlord in an interest-bearing account with a financial institution: Provided that the rate applicable to such account may not be less than the rate applicable to a savings account with that financial institution;
- (c) must, subject to subsections (3) or (6), be repaid to the tenant together with any interest accrued to such account on the expiration of the lease; and
- (d) shall, together with any interest accrued to it, not form part of the assets of the insolvent or deceased estate of the landlord in the event of the insolvency or death of the landlord.

(2) Upon request from the tenant during the period of the lease, the landlord must provide him or her with written proof in respect of interest accrued on the deposit referred to in subsection (1): Provided that where the landlord is a registered estate agent as provided for in the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), the deposit and any interest thereon shall be dealt with in accordance with the provisions of that Act.

(3) On the expiration of the lease, the landlord—

- (a) must, where no amounts are due and owing to the landlord in terms of the lease, refund the deposit together with the accrued interest in respect thereof, to the tenant, without any deduction or set-off, within seven days of expiration of the lease; or
- (b) 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, if any, and the balance of the deposit and interest, if any, must then be refunded by the landlord to the tenant not later than 14 days of restoration of the dwelling to the landlord; and
- (c) must make available to the tenant for inspection the relevant receipts which indicate the costs which the landlord incurred as contemplated in paragraph (b).

(4) The tenant and the landlord must jointly, before the tenant moves into the dwelling, inspect the dwelling to ascertain the existence of any defects or damage, with a view to determining the landlord's responsibility for rectifying any defects or damage or with a view to registering any such defects or damage.

(5) At the expiration of the lease, the landlord 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 is any damage caused to the dwelling during the tenant's occupation: Provided that—

- (a) failure by the landlord to inspect the dwelling in the presence of the tenant as contemplated in this subsection, 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; or 5
- (b) should the tenant fail to respond to the landlord's request for an inspection as contemplated in this subsection, the landlord must, within seven days from the expiration of the lease, inspect the dwelling in order to assess any damages or loss which occurred during the tenancy. 10
- (6) The landlord, in the circumstances contemplated in—
 - (a) subsection (5)(a), must refund the full deposit plus interest to the tenant;
 - (b) subsection (5)(b), without detracting from any other right or remedy—
 - (i) may deduct from the tenant's deposit the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys, if any; 15
 - (ii) must refund the balance of the deposit and interest, if any, after deduction of the amounts contemplated in subparagraph (i), to the tenant not later than 21 days after expiration of the lease; and 20
 - (iii) must make available the relevant receipts which indicate the costs which the landlord incurred, as contemplated in subparagraph (i), to the tenant for inspection. 25
- (7) 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, in such event the landlord retains all his or her rights arising from the tenant's breach of the lease. 30
- (8) A landlord may inspect the dwelling during the course of the lease, but in doing so must respect the tenant's right to privacy during the lease period and may only exercise his or her right of inspection in a reasonable manner after giving reasonable notice to the tenant. 35
- (9) Landlords' rights against tenants include his or her right to—
 - (a) prompt and regular payment of rental or any charges that may be payable in terms of a lease; 40
 - (b) recover unpaid rental or any other amount that is due and payable where the tenant fails or refuses to make payment on demand, after obtaining a ruling by the Tribunal or an order of a court of law;
 - (c) terminate the lease in respect of a dwelling or rental housing property on grounds that do not constitute an unfair practice and are specified in the lease; 45
 - (d) on termination of the lease—
 - (i) have the tenant vacate the dwelling or rental housing property immediately upon expiration of the lease and to receive such dwelling or rental housing property in a good state of repair, except for fair wear and tear; and 50
 - (ii) where the tenant fails or refuses to vacate the dwelling, evict the tenant from such dwelling or rental housing property after having obtained an order of court in accordance with the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No. 19 of 1998); and 55
 - (e) claim compensation for damage to the dwelling or rental housing property and damage to 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. 55
- (10) Landlords must ensure that the provisions of sections 5(6), (7) and (8) regarding the lease are complied with.

(11) A landlord must provide a tenant with a dwelling that is in a habitable condition, as well as maintain the existing structure of the dwelling and where possible facilitate the provision of basic services to the dwelling.”.

Amendment of section 5 of Act 50 of 1999, as amended by section 3 of Act 43 of 2007 5

8. Section 5 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
“(1) [A] The Landlord must reduce the lease entered into between himself or herself and [a] the tenant **[and a landlord, subject to subsection (2), need not be in]** to writing [or]: Provided that the lease will not be subject to the provisions of the Formalities in Respect of Leases of Land Act, 1969 (Act No. 18 of 1969).”;
- (b) by the substitution for subsection (2) of the following subsection:
“(2) The lease must contain the information set out in subsection (6).”;
- (c) by the substitution for subsection (3) of the following subsection:
“(3) A lease will be enforceable in a Tribunal or competent court.”;
- (d) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
“A lease contemplated in subsection [(2)] (1) must include the following information:”;
- (e) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
“(b) the description of the dwelling which is the subject of the lease; Provided that a street address will be sufficient;”;
- (f) by the insertion in subsection (6) after paragraph (f) of the following paragraph:
“(fA) information relating to the rights and obligations of the tenant and the landlord as set out in sections 4A and 4B;”;
- (g) by the substitution in subsection (6) for paragraph (g) of the following paragraph:
“(g) any other obligations of the tenant and the landlord, [which must not detract from the provisions of subsection (3)] not set out in sections 4A, 4B or the regulations relating to unfair practice;”;
- (h) by the substitution in subsection (6) for paragraph (h) of the following paragraph:
“(h) the amount of [the rental, and] any other charges payable in addition to the rental in respect of the dwelling or rental housing property, which other charges must be identified in the lease.”;
- (i) by the insertion of the following subsection after subsection (6):
“(6A) The Minister must develop a pro-forma lease agreement in all 11 official languages, containing the minimum requirements set out in this Act, which may be used as a guideline by the tenants and the landlords.”;
- (j) by the substitution for subsection (7) of the following paragraph:
“(7) A list of defects registered in terms of [subsection (3)(e)] sections 4A(4) and 4B(4) must be attached as an annexure to the lease [as contemplated in subsection (2)].” and
- (k) by the deletion of subsection (9).

Amendment of section 6 of Act 50 of 1999 50

9. The following section is hereby substituted for section 6 of the principal Act:

“Application of Chapter

6. This Chapter applies to all provinces in the Republic of South Africa.”.

Amendment of section 7 of Act 50 of 1999

10. The following section is hereby substituted for section 7 of the principal Act:

“Establishment of Rental Housing Tribunals

7. **[The] Every MEC [may] must within the first financial year following the commencement of the Rental Housing Amendment Act, 2014, by notice in the *Gazette*, establish a tribunal in the Province to be known as the Rental Housing Tribunal.”** 5

Amendment of section 9 of Act 50 of 1999, as amended by section 4 of Act 43 of 2007

11. Section 9 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 10

“(1) The Tribunal consists of **[not less than three and not more than five] four to seven** members, who are fit and proper persons appointed by the MEC, and must comprise—

(a) a chairperson, who is suitably qualified and has the necessary expertise and exposure to rental housing matters; 15

(b) not less than **[two] three** and not more than **[four] six** members, of whom—

(i) at least one and not more than two shall be persons with expertise in rental housing property management or housing development matters; **[and]** 20

(ii) at least one and not more than two shall be persons with expertise in consumer matters pertaining to rental housing or housing development matters; **and [.]**

(iii) at least one and not more than two shall be persons with legal qualifications and legal expertise.”; 25

(b) by the insertion after subsection (1A) of the following subsections: 25

“(1B) The members of the Tribunal must be broadly representative in terms of language, gender, race and disability.

(1C) The Tribunal may function as two committees, each with three members with the expertise set out in subsection (1)(b) and with one committee being chaired by the chairperson and the other by the deputy chairperson, as the chairperson may determine: Provided that a decision taken by a committee is deemed to be a competent decision of the Tribunal.”; 30

(c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 35

“(b) the MEC has consulted with the relevant standing or portfolio committee of the Provincial Legislature which is responsible for **[housing] human settlements** matters in the province.”;

(d) by the substitution for subsection (3) of the following subsection: 40

“(3) The MEC may appoint **[two] up to six** persons to serve as alternate members of the Tribunal in the absence of any member referred to in paragraph (b) of subsection (1), but such persons must have the relevant expertise contemplated in paragraph (b) of subsection (1) **and must serve as alternate for a member with similar expertise.”;** and 45

(e) by the insertion after subsection (4) of the following subsections:

“(4A) A person appointed in terms of subsection (4) may not serve for more than two consecutive terms.

(4B) Succession plans must be adopted and must provide for replacement of members in such a manner that, for the sake of continuity, all members are not replaced at the same time. 50

(4C) Members already appointed at the time of commencement of the Rental Housing Amendment Act, 2014 and who have already served two consecutive terms may be reappointed for an additional term of not more than 18 months, to ensure continuity.”. 55

Amendment of section 10 of Act 50 of 1999, as amended by section 5 of Act 43 of 2007

12. Section 10 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(1) The Tribunal [will sit] must meet on such days and during such hours and at such place as the chairperson of the Tribunal may determine after consultation with other members of the Tribunal.”;
 - (b) by the insertion after subsection (1) of the following subsection:
“(1A) The Tribunal may, subject to subsection (5), arrange two separate meetings in dealing with matters contemplated in subsection (4)(a), for purposes of effective functioning: Provided that such meetings shall happen simultaneously.”;
 - (c) by the substitution for subsection (5) of the following subsection:
“(5) The quorum of any meeting of the Tribunal is three members, of which [at least two members] one must be a member appointed in terms of section 9(1)(b)[(i) and (ii), respectively](iii).”;

Amendment of section 13 of Act 50 of 1999, as amended by section 6 of Act 43 of 2007

13. Section 13 of the principal Act is hereby amended—
- (a) by the substitution in subsection (4)(c) for the words preceding subparagraph (i) of the following words:
“make any other ruling that is just and fair to terminate any unfair practice, including, without detracting from the generality of the foregoing, a ruling to discontinue amongst others, but not limited to—”;
 - (b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
“(a) prevailing economic conditions [of supply and demand];”;
 - (c) by the substitution for subsection (11) of the following subsection:
“(11) The Tribunal must within 30 days of receipt of a complaint, refer any matter that relates to evictions to a competent court.”;
 - (d) by the deletion in subsection (12) of the word “and” at the end of paragraph (b) and by the insertion in that subsection after paragraph (c) of the following paragraphs:
“(d) make a ruling to compel payment of rent as specified in a lease, and arrear rentals, if any; and
(e) in respect of any matter over which it has jurisdiction, make any order that is necessary to give effect to this Act.”;
 - (e) by the insertion after subsection (12) of the following subsections:
“(12A) The Tribunal may on its own accord and at the request of one of its members or on application by any affected person, rescind or vary any of its rulings if such rulings—
 - (a) were erroneously sought or granted in the absence of the person affected by it;
 - (b) contain an ambiguity or patent error or omission, but only to the extent of clarifying that ambiguity or correcting that error or omission; or
 - (c) were granted as a result of a mistake common to all parties to the proceedings.(12B) The Tribunal may act on its own accord when supplementing or amending accessory or consequential matters, including—
 - (a) costs orders;
 - (b) altering an order for costs where it was made without hearing the parties;
 - (c) interest on ruling debts;
 - (d) clarification of a ruling so as to give effect to the Tribunal’s true intention; and
 - (e) correcting clerical, arithmetical or other errors in its ruling;

Provided that any substantive change to the ruling must be made within 14 days of the ruling being made.

(12C) An application for rescission or variation must be brought within 14 days of the ruling being received by the affected person.”.

Amendment of section 14 of Act 50 of 1999

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14. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) [A] Every local [authority] municipality [may] must establish a Rental Housing Information Office to advise tenants and landlords [in] with regard to their rights and obligations in relation to dwellings within [the area of such local authority’s] its area of jurisdiction[.]; Provided that local municipalities may combine the functions of the Rental Housing Information Office with an existing office.”;

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(b) by the substitution for subsection (2) of the following subsection:

“(2) [A] Every local [authority] municipality may, subject to the laws governing the appointment of local government officials, appoint or designate officials to carry out any duties pertaining to such Rental Housing Information Office.”.

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Amendment of section 15 of Act 50 of 1999, as amended by section 7 of Act 43 of 2007

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15. Section 15 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister [must] may make regulations, after consultation with the [standing or portfolio on housing] relevant parliamentary committees and every MEC, by notice in the *Gazette*, [make regulations] relating to—”;

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(b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) anything which may or must be prescribed under [Chapter 4] this Act”;

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(c) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) the procedures and manner in which the proceedings of the Tribunal must be conducted, including circumstances and process for submitting an appeal”;

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(d) by the insertion in subsection (1)(f) of the word “and” at the end of subparagraph (xv);

(e) by the deletion in subsection (1)(f) of the word “or” at the end of subparagraph (xvi);

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(f) by the insertion in subsection (1) after paragraph (f) of the following paragraphs:

“(fA) norms and standards that are aligned to the policy framework set out in section 2(3), in relation to—

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- (i) terms and conditions of the lease;
- (ii) safety, health and hygiene;
- (iii) basic living conditions including access to basic services;
- (iv) size;
- (v) overcrowding; and
- (vi) affordability;

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(fB) the calculation method for escalation of rental amounts and the maximum rate of deposits which may be payable in respect of a dwelling and which may be set per geographical area to avoid unfair practices particular to that area; and”;

(g) by the addition of the following subsection:

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“(3) The Minister must issue the regulations contemplated in section 1(b), (f) and (fA) within 12 months of the commencement of the Rental Housing Amendment Act, 2014.”.

Amendment of Chapters 4 and 5 of Act 50 of 1999

16. Chapters 4 and 5 of the principal Act are hereby amended by removing section 15 from Chapter 4 and inserting it under Chapter 5 before section 16.

Amendment of section 16 of Act 50 of 1999, as amended by section 8 of Act 43 of 2007

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17. Section 16 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph:
“(a) fails to comply with sections 4 or [5(2) or (9)] 5(1);”;
- (b) by the insertion after paragraph (a) of the following paragraphs:
“(aA) interferes with the rights of the tenant and landlord set out in sections 4A and 4B;
“(aB) fails to fulfil his or her obligations as landlord in terms of sections 4B(1)(c) and (11) respectively;”;
- (c) by the substitution for paragraph (g) of the following paragraph:
“(g) fails to comply with any ruling of the Tribunal **[in terms of section 13(4)];**”.

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Substitution of section 17 of Act 50 of 1999

18. The following section is substituted for section 17 of the principal Act:

“Review

17. Without prejudice to the constitutional right of any person to gain access to a court of law, the proceedings of a Tribunal, including an appeal in terms of section 17A, may be brought under review before the High Court within its area of jurisdiction.”

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Insertion of section 17A in Act 50 of 1999

19. The following section is hereby inserted in the principal Act, after section 17: 25

“Appeals

- 17A.** (1) Any person who feels aggrieved by the decision of the Tribunal may, in writing and within 14 days of receipt of the decision, file an appeal against that decision with the MEC.
- (2) The Minister must prescribe the circumstances under which an application for appeal may be submitted, including the procedure for filing and hearing of an appeal.
- (3) The MEC must select a panel of adjudicators who possess legal qualifications and expertise in rental housing matters or consumer matters pertaining to rental housing matters.
- (4) When appeals are lodged in terms of this section, the MEC must within one day of receipt of the appeal, appoint one or two adjudicators from the panel on a rotation basis to consider the appeals and must so refer the appeals for hearing.
- (5) When an appeal has been lodged, the operation and execution of the order in question shall be suspended, pending the decision of the appeal.
- (6) The appeal must be finalised within 30 days of referral by the MEC.
- (7) The adjudicators may refer the matter back to the Tribunal or confirm, set aside or amend the decision.”

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Substitution of expressions in Act 50 of 1999

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20. The principal Act is hereby amended by the substitution for the expressions “local authority” and “landlord”, wherever they occur, of the expressions “local municipality” and “landowner”, respectively.

Transitional provisions

21. Any additional or amended obligations imposed upon a landlord or tenant by the Rental Housing Amendment Act, 2014, shall become effective six months from the date of commencement of the Rental Housing Amendment Act, 2014.

Short title and commencement

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22. This Act is called the Rental Housing Amendment Act, 2014, and comes into operation on a date determined by the President by Proclamation in the *Gazette*.