



**Western Cape  
Government**

Human Settlements

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**IN THE WESTERN CAPE RENTAL HOUSING TRIBUNAL HELD IN CAPE TOWN  
ON 5 NOVEMBER 2018**

**CASE NO: 21/3/1/2164/S47**

**21/3/1/2164/S48**

**In the matter between:**

**MS FAIEZA SALIE : FIRST COMPLAINANT**

**OMAR SALIE : SECOND COMPLAINANT**

**And**

**EBRAHIM KASKAR : RESPONDENT**

**COMPLAINT : UNLAWFUL NOTICE TO VACATE  
EXORBITANT INCREASE IN RENTAL  
UNLAWFUL ENTRY  
FAILURE TO REDUCE LEASE TO WRITING  
PROPERTY : 39 GOLDSMITH STREET, SALT RIVER**

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**DEFAULT RULING**

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**BRIEF BACKGROUND:**

1. The Complainant and the Respondent entered into a verbal lease agreement with the Respondent, in terms whereof the Respondent let the property at 39 Goldsmith Street, Salt River to the Complainant.

2. The matter was referred to the Tribunal to conduct a hearing and to make a ruling as it may consider just and fair as contemplated in Section 13 (2)(d) of the Rental Housing Act. 50 of 1999.
3. The matter was accordingly heard on the 5<sup>th</sup> of November 2018.
4. The Complainants was represented by Mr Cogger of Ndifun UKwazi Law Centre and the Respondent elected to be absent by indicating to the Tribunal that he will not be part of the proceedings.
5. The Complainant lodged a complaint against the Respondent in respect of three complaints namely, the failure to reduce lease to writing; exorbitant increase in rental; and an unlawful notice to vacate.

## 6. **COMPLAINANT'S SUBMISSIONS**

- 6.1 The Complainants testified that they are senior citizens and have been residing at the property for 36 years. Since first occupation of the property they never had a written lease agreement, for the past three years they have required same from the Respondent with no success.
- 6.2 They are both pensioners on state pension receiving a combined R3 600 per month and cannot afford to pay the full rental from the pensions they receive.
- 6.3 By increasing the rent twice in one year and to levels well beyond what the complainants can afford, the Respondent has infringed the complainant's rights to access adequate housing.
- 6.4 That save for two occasions, the complainant's rent has increased by 10% every year. The 10% increases are often communicated over email to the complainants. The Complainants rent has been increased by more than 10% on two occasions:
  - 6.4.1 In November 2015, the complainants rent was increased from R3 600 to R4 500.00, an increase of R900.00 or 25%.
  - 6.4.2 In January 2018 it was increased from R5 500.00 per month to R7 500 an increase of R2000.00 or 36%.
  - 6.4.3 The January 2018 increases were not the first increase in the past year. During October 2017, the Complainants rent were increased from R5000 to R5 500, an increase of R500 OR 10%.
  - 6.4.4 The January 36% increase was unexpected and the Complainants refused to pay the increase.

6.5 It was argued on behalf of the Complainants that the Tribunal ought to have regard to:

6.5.1 The Complainants personal circumstances, and their ability to absorb any rent increase

6.5.2 The state of maintenance and repairs affected by the Respondent (and the complainants) at the properties; and

6.5.3 A just and equitable rental is a rental that they can reasonably be expected to pay.

6.6 It was argued further that the January 2018 rental increase of 36% as the second increase in one year unreasonably prejudices their rights and interests and constitute an unfair practice.

6.7 That as evidenced in the TPN suburb report for Salt River, the average rent for a two bedroom sectional title unit in Salt River for 2018 is R5773. The market low for the area in the same year is R5000 and the market high is R6 160. That the Respondent sought to impose the rent well beyond the market average.

6.8 The rent has increased every year at 10% which has made their ability to absorb the January 2018 increase untenable, in addition the Respondent has also failed to maintain the property.

6.9 The Complainants were served with a notice to vacate the property, after the Respondent imposed the 36% rent increase. It is submitted that the real intention of the notice to vacate was to pressurize the Complainants to accept the rent increases and not for the Respondent to do maintenance on the property as he had alluded in the letter.

6.10 The Complainant argued that the Tribunal is to scrutinize a landlords reasons for termination of lease agreements and that they should not constitute an unfair practice.

## **ANALYSIS OF EVIDENCE**

7. The fundamental question in this matter is whether the failure to provide a written lease agreement, the increase in rental and the notice to vacate constitutes an unfair practice.

8. Section 1 of the Rental Housing Act reads as follows:

“**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 landlord.

9. Section 13 of the Act contains the steps required to be taken in order to resolve disputes concerning unfair practices. In turn section 13 provides inter alia that upon finding that an unfair practice exists, a tribunal may make any ruling that is just and fair to terminate any unfair practice.

10. *In Maphango and Others v Aengus Lifestyle Properties (Pty) Ltd 2012 (5) BCLR (CC) paragraph 43 and 52 held the following:* “The Act provides that an unfair practice ruling may include a determination regarding the amount of rental payable by a tenant. But it carefully circumscribes the tribunal’s powers in making the determination. It must be made in a manner that is just and equitable to both tenant and landlord. In addition the rent determination must take due cognizance of-

- a) Prevailing economic conditions of supply and demand.
- b) The need for a realistic return on investment for investors in rental housing;
- c) Incentives, mechanisms, norms and standards and other measures introduced by the Minister in terms of the policy framework on rental housing referred to in section 2(3)”.

11. It would be wrong for this Tribunal to take a narrow view to ignore the importance and impact of the Act. Rule of law considerations militate against that. The Act requires therefore from the Tribunal to even handedly impose obligations on both parties. Furthermore, both the Complainant and the Respondent’s rights and interests have been evaluated and taken into consideration as provided by the Maphango case mentioned above.

12. It follows that where a tenant lodges a complaint about a termination based on a provision in a lease, the tribunal has the power to rule that the landlord’s action constitutes an unfair practice, even though the termination may be permitted by the lease and the common law.

13. In this particular matter there is no written lease agreement, specifically, there are no provisions specifying when a termination of the lease will be permitted. The

grounds in which the Respondent terminated the lease agreement cannot be upheld by this Tribunal.

14. The Tribunal is satisfied that the Complainant made out a case for exorbitant and exploitive rental. The Rental increase of 36% is found to be exorbitant and unfair.

15. The request by the Complainants for maintenance is not granted in this matter as it was not properly instituted as one of the complaints.

## **RULING**

After having consideration of all the evidence put before the Tribunal the following ruling is made:

1. The failure of the Respondent to provide a written lease agreement constitutes an unfair practice.
2. The Respondent is ordered to reduce the lease into writing with immediate effect.
3. The rental increase of 36% is exorbitant and exploitive. The monthly rental of R5 500 is just and fair.
4. The Notice to Vacate addressed to the Complainants constitutes an unfair practice therefore invalid.

**CHAIRPERSON:**



**Date:** 20:12:2018

Presiding Officer: S Morara, N van Stade, A M du Plessis, T Cloete

**NOTE: A Ruling of the Tribunal is deemed to be an order of a magistrate court in terms of the Magistrates' Courts, Act 1944 in terms of Section 13 (13) of the Rental Housing Act, 1999 and is enforced in terms of that Act.**

**It is an offence in terms of Section 16 of the Rental Housing Act, 50 of 1999, not to comply with this ruling. If convicted, the guilty Party may be liable to pay a fine or be imprisoned up to a maximum of two years, or to both, a fine and imprisonment.**