



KWAZULU-NATAL PROVINCE

HUMAN SETTLEMENTS
REPUBLIC OF SOUTH AFRICA

Guideline for the Management of Rental Housing Stock

DECEMBER 2022

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1. INTRODUCTION

The rental housing programmes has two primary objectives. Firstly, to contribute to the national priority of restructuring South African society in order to address structural, economic, social and spatial dysfunctionalities thereby contributing to Government's vision of an economically empowered, nonracial, and integrated society living in sustainable human settlements. Secondly, to improve and contribute to the overall functioning of the housing sector and to contribute to widening the range of housing options available to the lower to middle income earners.

2. LEGISLATIVE FRAMEWORK

The guideline is informed by the following Legislation:

Section 26 of the Constitution of the Republic of South Africa of 1996 provides that:

- (1) Everyone has the right to have access to adequate housing
- (2) The State must take reasonable legislative and other measures, within its available resources to achieve the progressive realisation of this right.

Section 9 of the Constitution of the Republic of South Africa of 1996 provides that:

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

National Housing Act 107 of 1997, Republic of South Africa:

The purpose of the Act is to provide for the facilitation of a sustainable housing process and thus outlines the general principles applicable to housing development in all spheres of government. This Act defines the functions of national, provincial and local governments in respect of housing development and further makes provision for the establishment of a South African Housing Development Board.

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998:

The Act was promulgated to provide for the prohibition of unlawful occupation and to put in place fair procedures for the eviction of unlawful occupiers who occupy land without permission of the owner or person in charge of such land. It further provides that no one may have their home demolished or be evicted without a court order after considering all the relevant circumstances.

Rental Housing Act 50 of 1999, Chapter 2 provides that:

- (1) Government must promote a stable and growing market that progressively meets the latent demand for affordable rental housing among persons historically disadvantaged by unfair discrimination and poor persons, by the introduction of incentives, mechanisms and other measures that:
 - (i) Improve conditions in the rental housing market;
 - (ii) Encourage investment in urban and rural areas that are in need of revitalization and resuscitation

3. OBJECTIVES

The objective of this guideline is to:

- a) Ensure transparency and uniformity in terms of the compilation and implementation of lease agreements as well as the standardizing of such agreements.
- b) Ensure that the lessor and lessee are made aware of their roles and responsibilities; and rights and duties as per the lease agreements.
- c) Guide the process and procedures which need to be followed for consumer education in respect of the above and prescribe the relevant information that needs to be given to the communities.
- d) Provide a system in determining the allocation procedure for rental units with regard to reassignment of tenancy.

4. QUALIFICATION CRITERIA

The following main criteria is applicable:

- a) The person is lawfully resident in South Africa;
- b) He or she is legally competent to contract (i.e., 18 years of age or older, legally married or legally divorced and of sound mind);
- c) Married or cohabiting: he or she is married (in terms of the Civil Law or in terms of a Customary Marriage) or habitually cohabits with any other person;
- d) Community Residential Units (CRU): Persons earning R800 to R3500.
- e) Social Housing Programme: Persons earning R1 500 to R22 000.

5. LEASE AGREEMENTS

5.1 The lease agreement must have regard to the following pertinent aspects in order to prevent any disputes at a later stage namely:

- a) **Date of occupation:** when the lessee can physically move into and start using the property.
- b) **Method of payment:** how will the rental price be paid.

- c) **Duration of lease agreement:** Lease agreements should ideally be entered into for a period of one year and/or a maximum of two years, however a month to month or six-month agreement may be entered into depending on the circumstances of the tenant.
- d) **Date of payment:** the date by which the rental should be paid.
- e) **Consent to jurisdiction of court:** parties must agree to the jurisdiction of the court, should any legal actions or proceedings relating to the agreement or breach thereof be instituted.
- f) **Cancellation:** the lessee may choose to cancel the lease at any time but must give the lessor reasonable written notice as stipulated in the lease agreement. Should the lessee cancel prior to the expiration of the lease a cancellation penalty will apply. A one-month notice must be given to the lessor prior to the cancellation.
- g) **Breach of agreement:** should any party breach the contract; the aggrieved party must advise the defaulting party of the breach and provide a minimum timeframe to rectify the breach.
- h) **Escalation:** the reasonable escalation of the rental amount and the frequency of same.
- i) **Duties:** the rights and obligations of the lessor and lessee.
- j) **Maintenance:** the lessee's duty to maintain the inside of the premises in good order and condition as the time of occupation and as per the inspection report which highlights that the unit is in good condition.
- k) **Structural Alterations:** the lessee should not make any structural additions and alterations to the premises without consulting the lessor and obtaining written consent to do so.
- l) **Charges:** information on the amount of any charges payable in addition to the agreed rental amount.
- m) **Subletting:** a clause explicitly stating that no one else can reside on the property without the consent of the lessor and that the tenant is not allowed to sublet the property. The addendum to lease will verify the names and number of occupants should there be a dispute regarding occupancy.
- n) **Alienation of property:** the lessee shall not without having the written consent of the lessor having been obtained take any boarders or sublet the dwelling or part thereof.
- o) **Variation:** any variations on the said agreements are of no force and effect unless confirmed in writing and signed by all contractual parties.
- p) **Deposit:** The lessee shall pay a rental deposit equal to one month's worth of rent. The lessor must invest the rental deposit in an interest-bearing account. Any interest accrued must be returned to the lessee along with the deposit when they vacate the property.

*A pro forma **Lease Agreement** is attached as **Annexure 1**.

*A pro forma **Notice to Vacate and Termination of Lease Letter** is attached as **Annexure 2**.

5.2 A provisional allocation or selection shall cease under the following circumstances:

- a) Written withdrawal of application by the proposed lessee.
- b) Any further circumstances outlined in the lease agreement.
- c) Any other circumstances that the Department and Institution may feel justify the urgent termination or withdrawal of the rental allocation.

6. RE-ASSIGNMENT OF TENANCY

- 6.1 Transfer of tenancy: A request for transfer to alternative and more suitable accommodation may be accepted and dealt with strictly on the merit of each case. Tenants who intend to transfer from one rental unit to another must make an application in writing to the institution.

The following aspects should be taken into consideration when assessing each request:

- a) Medical reasons supported by a diagnosis from a registered medical practitioner: for example, applications for transfer to ground level due to mobility, handicap and poor eyesight may be considered.
- b) A change in employment status.
- c) Increase or decrease in family size.
- d) A change in financial status.

The said application must be accompanied by the following supporting documents:

- Copy of identity document
- Salary advice from all signatories to the lease agreement
- 3 months bank statements so that an assessment can be done in terms of affordability
- Proof of diagnosis by a registered medical practitioner, if applicable
- Proof of financial dependents
- Additional supporting affidavits, if required

NB: Transfer will only occur once an appropriate unit is available, the tenant is not in breach of lease agreement, the tenant is not in arrears regarding rental monies payable.

- 6.2 Succession of tenancy: Ideally waiting lists and qualification criteria determine fairness in allocating units. However, the possibility of persons residing with the tenant may make an application to continue occupancy. This can qualify in situations where the original tenant passed away or abandoned the property, divorced spouse, or separated cohabiting partners who wish to take over the rental of the unit from the original tenant. Aspects to consider here are the period of abandonment, confirmation of death, which spouse/partner acquires custody of the children. While these factors may be taken into account the qualification criteria for rentals will also need to be taken into consideration.

The said application must be accompanied by the following supporting documents

- Salary advice from all signatories to the lease agreement
- 3 months bank statements so that an assessment can be done in terms of affordability
- A letter of motivation
- Death certificate if the lessee has passed away
- Sworn affidavit confirming all the information provided is correct and confirming relationship to the deceased

NB: Transfer will only occur if the applicant meets the relevant qualification criteria, and the motivation is significant enough to permit the succession.

7. ILLEGAL SUBLETTING

Rental housing options are meant to provide housing of a good quality for low to middle income earners. Most people in this income group cannot secure or afford rental elsewhere. When a housing unit is sublet, there is no way to ensure that subletter falls within the defined income category. Therefore, subletting denies a needy person of a good quality rental housing opportunity which is safe and secure for his/her family. Furthermore, tenants do not have the necessary resources to undertake the proper screening and background checks of subletters. Overcrowding and illegal subletting of rental units also lead to various issues including an overuse of facilities, excessing use of water and electricity and unhygienic living conditions.

Thus, to prevent the above-mentioned it is essential that before anything is signed, it is important that all parties are clear about the terms and clauses of the lease agreement. The contract should also list the full names and details of all authorized tenants and state explicitly that no one else can reside on the property without consent from the lessor/landlord. In addition, the lease agreement must clearly state that tenants are not allowed to sublet the unit.

7.1 All lease agreements must specify the following:

- a) The tenant has to personally reside on the premises for the agreed period as per the agreement and may not allow any other person/s to occupy the premises or any part thereof instead of the tenant. The tenant must not sublet the premises or any part thereof without consulting the lessor and obtain written approval to do so.
- b) The tenant may not cede any of his/her rights in the lease agreement to any other person or body
- c) That the tenant understands and also accepts that the lessor will draw up and keep a waiting list of persons who intend to rent the premises and the lessor has the sole discretion to decide who the new lessee will be.

7.2 The following clause should be incorporated into all lease agreements:

“The tenant shall not assign, underlet, part with the possession of or transfer the Premises or any part thereof or any interest therein or permit or suffer any arrangement or transaction whereby any person who is not a party to this Lease obtains the use, possession, occupation or enjoyment of the Premises or any part thereof irrespective of whether any rental or other consideration is given therefor. The lease created hereby shall be personal to the Tenant named in this Lease. Without limiting the generality of the foregoing, the following acts and events shall, unless approved in writing by the Landlord, be deemed to be breaches of this agreement.”

8. POST OCCUPATION TRAINING/CONSUMER EDUCATION

The Department and Institution must conduct post occupation training bi-annually or as required, with tenants. The training should concentrate on the tenants understanding of the relevant housing programme, lease agreement and the general rules and regulations applicable to the rental accommodation. The following pertinent information should be workshopped to tenants:

- a) The definition, purpose, and importance of a lease agreement.
- b) The rights and responsibilities of a tenant as follows:

RIGHTS	RESPONSIBILITIES
1) Privacy	1) Payment of rental amount and utility bills timeously
2) Clean living conditions in the common areas of the building	2) Retain the rental unit in the same standard as when he/she moved in
3) Live in a well-maintained building that complies with health, fire, and safety protection requirements	3) Live by the rules of the building with consideration for all neighbours
4) Give adequate notice prior to moving out as agreed in terms of the lease agreement	4) Abide by the municipal by-laws

- c) The rights and responsibilities of the landlord as follows:

RIGHTS	RESPONSIBILITIES
1) Collect rental amounts due on the agreed date as per the lease agreement	1) Allow tenants their privacy on the property
2) Cancel lease agreements if the rental amounts are not paid by the due date or as per the agreed arrangement should the tenant be in arrears	2) Enforce tenants' compliance with municipal by-laws
3) Terminate the lease agreement if the rental unit no longer meets the required health and safety standards by law	3) Ensure that the properties common areas are well maintained

- d) Termination of Lease Agreement:
In circumstances where the tenant intends to vacate the rental accommodation, he/she should inform the supervisor/institution. This must be done by way of a written notice indicating that he/she wants to terminate the lease agreement.

The said written notice must contain the following:

- Occupant's name
- Building name
- Block number/Unit number
- Vacating date

- e) The KZN Human Settlement's Housing Stock Maintenance Policy Guideline is attached as **Annexure 3** must be used to ensure that rental units are maintained in a satisfactory manner and maintenance is undertaken on a regular basis. This will ensure that units are in a standard condition and remain habitable during its useful life.

9. MEDIATION AND RESOLUTION OF DISPUTES PROCESS

The lessee should approach the municipality/SHI as a first point of contact should there be any issues regarding the adequate implementation of a lease agreement. Should lessee not reach any conclusion or if the matter cannot be resolved only then must he/she approach the rental housing tribunal. A pro forma Tenant Complaint Form is attached as **Annexure 4**.

The Department's Rental Housing Tribunals role is to resolve rental housing disputes between landlord and tenants arising from unfair practices, thus bring about harmony and stability in the rental property sector.

The disputes dealt with by the Tribunal include but not limited to:

- Failure to adequately maintain the rental property
- Unlawful possession of property and unlawful evictions
- Failure to accept notice and to vacate the premises
- Unlawful notices to vacate
- Failure to provide monthly statements or issue receipts
- Unlawful seizure of possessions
- Failure to provide municipal services
- Failure to pay rental monies timeously

The following procedure must be adhered to during a dispute:

Step 1	A complaint is lodged by the aggrieved party with the department or municipality
Step 2	The complaint is then registered complaint's register and a case number is generated
Step 3	A preliminary investigation is then conducted by the Case Manager to establish if it is indeed an unfair practice or whether the Tribunal has jurisdiction
Step 4	The case is then scheduled for a mediation process where notices are issued to both parties to appear before a mediator in trying to resolve the dispute
Step 5	If the mediation succeeds, the matter is then resolved, and the agreement is reduced into writing
Step 6	If the mediation fails, a certificate of non-resolution is issued, and the matter is referred for a hearing.
Step 7	Summonses are then issued to both parties to appear before a Tribunal to resolve the matter through a formal hearing
Step 8	At the end of the hearing a ruling is made which is binding to both parties and it is enforceable as it is deemed to be an order of the Magistrate's Court

NB: Should any party be dissatisfied with the outcome of the matter, then he/she can approach the High Court for review

10. EFFECTIVE DATE

The effective date of this guideline will be the date of signature by the MEC.

11. MONITORING AND EVALUATION

The Department's Directorates responsible for rental housing in collaboration with the Departments Policy, Research and Product Development Directorate will undertake the monitoring and evaluation of this guideline. The Social Housing and CRU Directorate will implement and thereafter identify any risks/gaps in the guideline. The Department's Policy, Research and Product Development Directorate will review the guideline when required.