

the practical health + safety

newsletter for the south african business owner + consumer

residential housing

| volume | one | twenty | sixteen

| the legal objective |

On 1 February 2002 The Western Cape Provincial Government became the first to explicitly require all residential properties leased in the Western Cape to comply to Health & Safety. Failing which would constitute an unfair practice, as defined by the Residential Housing Act.

This was well in-line with the objective of the Rental Housing Act, which came into being two years earlier on 15 December 1999.

The ambit of the Act spelled out its objectives as:

“ WHEREAS in terms of section 26 of the Constitution of the Republic of South Africa, 1996 everyone has the right to have access to adequate housing;

AND WHEREAS the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS no one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances.

AND WHEREAS no legislation may permit arbitrary evictions;

AND WHEREAS rental housing is a key component of the housing sector;

AND WHEREAS there is a need to promote the provision of rental housing;

AND WHEREAS there is a need to balance the rights of tenants and landlords and to create mechanisms to protect both tenants and landlords against unfair practices and exploitation:

AND WHEREAS there is a need to introduce mechanisms through which conflicts between tenants and landlords can be resolved speedily at minimum cost to the parties;”

With the National Unfair Practices Regulations of 2008 the law made equal provision for compliance to Health & Safety, albeit not in so many words, but do require a property to be fit for human occupation and must not violate the Act or any other law (Read Health & Safety Act/Regulations). So the need for Health & Safety compliance is as old as the Rental Housing Act itself. In the 2014 Amendment the definition expanded even further, where **“habitability”** is

CALL OUR NATIONAL SWITCHBOARD
087 702 9400
For Expert Help

now defined as to be: **“ a dwelling that is safe and suitable for living in and includes— (a) adequate space; (b) protection from the elements and other threats to health; (c) physical safety of the tenant, the tenant's household and visitors; and (d) a structurally sound building”**

The need for a minimum set of standards to the quality of housing became evident. Our population demographics were changing rapidly, we had high influx of urbanisation, and these created the perfect environment to exploit the poor. So like in the case of Labour Legislation, the existing checks and balances from the Occupational Health & Safety Act were

compliance in the Western Cape for instance.

- 3. **Mould and dampness** holds great health risks for humans, and therefore a mouldy, damp place would not be compliant.
- 4. **Pool fencing** would need to adhere to the relevant Safety Standards and By-Laws if applicable.
- All other electrical installations, like **garage doors, and pool pumps, stoves, geysers** etc has to be safe, and in a good condition.
- 5. **Noise & Air pollution** will be addressed, so too does the quality of bathrooms & kitchens.



called upon to address these concerns and set the minimum standard.

| foreign but not new |

It does, of course, ring slightly foreign to us, to have a house comply to Health & Safety. But in reality, when one consider what it is that needs to be in place to bring about compliance, we realise that this is the stuff we all expect from any property we would be renting for ourselves in any event, now simply formalised, less room for dispute, and easier to resolve, should a dispute arise.

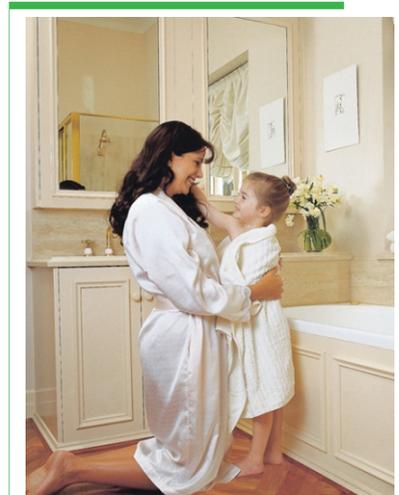
So what is included in requirements for the average home?

- 1. **The electricity has to be safe** - Electrical Certificate of Compliance - issued under the General Electrical Installation Regulations.
- 2. The property would have to comply to other regulations too - depending on what does form part of the home. Gas stove? LPG **Gas Certificate of Conformity** & the **plumbing certificate** of

- 6. Properties need to be free from **pests and rodents**, for they will constitute a health risk.
- 7. **Overcrowding** is not legal, so the landlord cannot keep on sub-dividing the property and putting more and more people in there. That too is a violation of Health & Safety.

So there is nothing really “major” or new which is now suddenly expected from the landlord, and frankly, any *bona fide* landlord who had always looked after his properties, and have never allowed people to live in decay will have no problem obtaining compliance for his or her properties. This will only be a problem to the unethical landlord, the slum-lords. And they are exactly the reason we have these laws protecting the consumer.

What is important is that this ensure safety for everyone, especially vulnerable people, or people exposed to bigger risks, like children, and older people. Where a small mishap may have dire consequences. So we have to ensure that reasonable practical solutions are found, where the risks are not addressed, small things you would find anywhere else, like **handrails at staircases** where needed, **non-slip tiles** in showers and bathrooms and outside areas.



Where, in the past, litigation could span months, simply debating whether or not a particular SANS (South African

| old problems & new solutions |



It has, for many years, been a struggle, for many tenants, to get their respective landlords to the point of properly maintaining the property once they have taken occupation. And while the Consumer Protection Act also help in ensuring the tenant is receiving what he is paying for, the

National Standards) apply to a specific dwelling or case, now this is all incorporated into Health & Safety. Where there are more than one Act, or Regulation or SANS or By-Laws or Ordinance involved, now becomes the problem of the Health & Safety team.

What is interesting is that the Regulations require the property to comply to Health & Safety at the onset of the lease as well as for the duration of the lease.

While it is not regarded as a “formality to be concluded” in signing a lease, it is a requirement of a valid lease. The Lessor is therefore required to ensure that the property he or she plans on leasing out to the Lessee is compliant to Health & Safety. If not well before the lease is signed, at the very least it has to comply immediately prior to signing the lease agreement. Failing which, the legality of the lease agreement may be in doubt. And without getting to technical for a newsletter, the absence of compliance becomes problematic when considering aspects of contract law in South Africa, specifically referring to the Will / Declaration & Reliance theories, as well as *iustus error* as well as against public policy and terms *in lege*, all or any of which could render the contract unenforceable and the landlord could find him or herself in a rather precarious position.

unfair practices regulations makes it a lot cheaper, quicker and simpler to have disputes in relation to a residential lease resolved. And the requirement to comply to Health & Safety is a very direct obligation, backed by a myriad of laws and regulations, standards and by-laws - therefore protecting the Lessee against unscrupulous Landlords, but also affording the same protection to Lessors against opportunistic tenants who would consider any and every avenue of not paying their rent. It is well known that some tenants would use all kinds of vague claims and criteria as to constitute “grounds” for withholding or deducting from the rent. And while many landlords, and their attorneys in many cases too, are of the opinion that there can be no legal justification or grounds for withholding rent or make deductions from it, this is not entirely accurate. It would serve them well to read *Lester Investments (Pty) Ltd v Narshi 1951 (2) SA 464 (C)* and *Poynton v Cran (1910 AD 205)*.

In both cases above the so-called “restrictive clause” existed, and despite this, the courts held that where repairs are required or where enjoyment is seriously impaired, then the tenant may very well claim or make deductions as is necessary to repair.

For this very reason the more reputable Estate Agents will not only enquire about, or advise their clients of the legal requirement of compliance, but will in fact assist in and insist on compliance before listing the property, for anything less would be negligent, and have an adverse impact on both their client and their tenant.

Further to this, the Lessor is to ensure the property remains compliant to Health & Safety for the duration of the lease, in other words until the current tenant vacate the property.



No landlord would want to be placed in a position where all kinds of repairs which may be or may not be necessary are effected and the amounts simply deducted from the rent. For this purpose Health & Safety compliance provide excellent protection, if it is not a requirement for habitability as per the Amendment of 2014, or Health & Safety compliance, then there can be no legal grounds for deductions.

Failure to adhere to the Health & Safety requirement could well lead to a highway to trouble. The tenant could easily take the landlord to task in the Rental Housing Tribunal, or could opt for more expensive routes like the traditional courts.

The landlord would almost certainly be facing a stiff fine, and might even find him- of her-self in a position where they could be liable to the tenant for losses, costs or damages, plus legal fees.

It is simply not worth opting for a “blind-eye” approach. The risks are to great, the potential for losses to high.

| enforcement |

One of the reasons people are getting confused about the application of Health & Safety in residential properties, seems to be the confusion of who or what would be enforcing this?

In industry and business environments, it is well established that the enforcement is largely coming from two sides, Dept of Labour on the one end, and clients who will not deal with suppliers who do not comply on the other end.

But surely Dept of Labour will not have the time nor the jurisdiction to run around homes and do compliance checks? Or do they?

No they don't. Enforcement comes in the shape of reputation, and tenants and the Rental Housing Tribunal, and fate of course.

If you found this newsletter interesting you may also want to look at some of our other property related publications

Body Corporates: Residential & Mixed Use

Lifestyle Estates: Managing Both

Commercial Estates- all about money

Industrial Property Pitfalls

Vlame (SA) is a Health & Safety group, established as far back as 2005. While it was focussing mostly on construction related matters in the early days, it changed hands in 2008, and immediately the focus shifted to non-construction business.

Over the last 8 years thousands and thousands of new and unique documents, like this one, and many other industry specific requirements were developed - to be better able to assist clients over a much broader spectrum than mere construction.

We have become absolute experts on Health & Safety in fully functioning, running businesses across most industries in South Africa. Our clients include the likes of Hotels, Office blocks, Lifestyle Estates, Body Corporates and Home Owner Associations, Restaurants, Hotels and Guesthouses. Game

Tenants have caught on to the requirement set by law, and we see large-scale reporting and reliance on this to the Rental Housing Tribunal. The “word is spreading like wildfire” would be an accurate term to use. This is probably the biggest “enforcers” of compliance, as they have an intimate knowledge of the property, and it is very easy to determine compliance - after they moved in - by asking a few pertinent questions.

Naturally the larger estate agencies are very aware and concerned about their reputation and that of their clients, so you will find they enforce the requirement, as this brings about a better tenant, and the property can be marketed with a better price-bracket in mind. Distinguishing themselves from the property owner who rents out his property himself, or the smaller, perhaps lesser reputable, estate agents who cannot provide clients with the same level of compliance and service.

Lastly, fate kicks in, in the event of an injury, or an electric shock, or even just a “close-call” with kids at the pool, and the landlord face a potential mountain of legal action. With very little of a defence.

This is not a position any responsible landlord would want to find himself in, don't be the next victim. **end**

If you would like to obtain a free checklist for compliance on own title residential rentals, please send us an email to help@vlame.co.za

farms, Hospitals, Schools and a wide variety of commercial and industrial businesses. If you need a reputable Health & Safety partner, look no further. Feel free to peruse our website at www.vlame.co.za for more information about Health & Safety, uncluttered, no frills and to the point.

Call Us On **087 702 9400** For:

**Safety Files
Risk Assessments
Compliance Reports
Incident Investigations
Induction Training**

Visit our website for more information:
www.vlame.co.za

