

BILL

TO unify, consolidate and amend the law relating to the regulation of rent and eviction of lessees and occupiers of residential dwellings, to make provision for the establishment of rent tribunals and to provide for incidental matters

(Introduced by the Minister responsible for housing)

Preamble

WHEREAS the Constitution of the Republic of Namibia provides –

1. under article 8 that the dignity of all people shall be inviolable and that no person may be subject to inhuman or degrading treatment;
2. under article 10 that no person may be discriminated against on the grounds of social or economic status;
3. under article 13 that no person shall be subject to interference with the privacy of their homes, correspondence or communications save as in accordance with law;
4. under article 14 that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State;
5. under article 23 that Parliament may enact legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of discriminatory laws or practice;

WHEREAS the land tenure system prior to Independence was based on race and legislation provided the then government with the means to construct territorial segregation;

WHEREAS weak land tenure rights contribute to socially volatile communities and discourage investment, which in turn exacerbate socio-economic problems such as poverty, social exclusion and limited access to urban services;

WHEREAS the aim of the Government of the Republic of Namibia is to strategically position housing to play an important and meaningful role in the implementation and realization of Namibia's Vision 2030, Habitat Agenda and Istanbul Declaration on Human Settlements of 1996, United Nations Millennium Declaration and Johannesburg Plan of Implementation of the World Summit on Sustainable Development of 2001 to which Namibia has committed herself;

RECOGNISING that the majority of the Namibian population can neither access nor afford conventional home loan facilities offered by the financial market nor can they access urban freehold land and professional services due to poverty and limited disposable income and that housing also impacts on the social, political and environmental fabric of the Namibian society;

RECOGNISING that access to basic services and shelter should be viewed as an inherent right of human beings in Namibia, particularly given the socio-economic background of the Namibian society characterized by poverty, inequality and lack of access to basic services;

BE IT ENACTED as passed by the Parliament and assented to by the President of the Republic of Namibia, as follows:

ARRANGEMENT OF SECTIONS

PART 1
INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates-

"appeal board" means an appeal board constituted under **section 33**;

"child", in relation to a lessee, means that lessee's own or lawfully adopted child or a stepchild, who is not less than 18 years of age or who is completely dependent on that lessee;

"dwelling" includes any house, hostel room, hut, shack, flat, apartment, room, outbuilding, garage or similar structure which is leased, as well as any storeroom, outbuilding, garage or demarcated parking space which is leased as part of the lease but excludes an accommodation establishment as defined in section 1 of the Namibia Tourism Board Act, 2000 (Act No. 21 of 2000);

"family" in relation to a person, means his or her spouse and his or her child or children;

"habitable part" in relation to a premises, means that part of a building used for human occupation, including living-rooms, bathrooms, lavatories, kitchens, balconies, entrance halls, stairways, corridors, and also garages and car ports which form an integral part of the building and are exclusively intended for and used by the inhabitants, but excludes gardens, roof-gardens, courtyards, driveways, roofless parking areas, sidewalks, halls, business premises, and any spaces not forming an integral part of the building and not exclusively intended for and used by the inhabitants;

"inspector" means an inspector appointed in terms of **section 37**;

"lease agreement" means an agreement concluded between a lessee and a lessor for the lease of a dwelling for residential purposes;

"lessee" means any person by whom or on whose account or behalf the rent of any dwelling is payable to a lessor in terms of a lease agreement, and includes-

- (a) the spouse of a lessee who rented the premises in his or her personal capacity, if that spouse was living with the lessee at the time of his or her death and is desirous of continued occupation of the premises; and
- (b) unless the lease agreement expressly or by necessary implication prohibits sublease, cession or assignment by the lessee, a sub-lessee, cessionary or assignee of the lessee;

"lessor" means –

- (a) the owner or his or her authorised agent;
- (b) unless a lease agreement expressly or by necessary implication prohibits sublease, a lessee who has sublet the dwelling;
- (c) a person who is in lawful possession of a dwelling and has the right to lease or sublease it;

“local authority” means a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No 23 of 1992);

“local authority area” means the area of jurisdiction of a local authority as declared under section 3 of the Local Authorities Act, 1992;

"magistrate of the district" means the magistrate of the district in which a local authority area is situated and includes any additional magistrate or assistant magistrate designated by the magistrate of the district;

“Minister” means the Minister responsible for housing affairs;

"premises" means a house or building with the grounds on which it was built and all its appurtenances;

“prescribed” means prescribed by regulation;

“Public Service Act” means the Public Service Act, 1995 (Act No. 13 of 1995);

"reasonable rent" with regard to a dwelling, means a rental that a rent tribunal has determined to be a reasonable rent in the circumstances of a particular case: Provided that -

- (a) no rent shall be considered reasonable which, after deduction of -
- (i) the actual rates and taxes paid or payable in respect of the dwelling and the grounds in which it is situated and which are occupied in connection therewith;
 - (ii) a reasonable amount, determined by the rent tribunal for any furniture, fittings, equipment or services provided by the lessor to the lessee;
 - (iii) premiums paid by the lessor in respect of insurance to cover for the risk of fire or related destructive occurrences in regard to the dwelling and the furniture in it;
 - (iv) an amount determined by the rent tribunal which is reasonable in respect of expenses incurred by the lessor, if any in collecting the rent for the dwelling;
 - (v) any amount paid by the lessor in respect of the supply of electricity, water or gas for domestic purposes in connection with the dwelling;
 - (vi) any amount paid by the lessor for sanitary services and sewerage in respect of the dwelling,
- gives an annual return to the lessor of more than 10 per cent on the joint value of the land and improvements;

- (b) the prescribed percentage must be considered the basic rate of interest normally imposed by banks on mortgage bond loans, and if the rate of interest that banks charge on mortgage bond loans of the type usually granted in respect of properties such as the dwelling, is higher or lower than that prescribed percentage, the allowable percentage referred to in paragraph (a) must be increased or reduced, as the case may be, by the same percentage figure that the aforementioned rate of interest exceeds or falls short of that prescribed percentage; and
- (c) if a dwelling comprises a section only of the habitable part of premises, a reasonable rent must be determined in the manner described in paragraphs (a) and (b) in respect of the entire habitable part, and thereafter a reasonable rent for the dwelling must be fixed in such manner that it has the same ratio to a reasonable rent for the entire habitable part that the floor area of the dwelling has to the floor area of the habitable part;

“rent tribunal” means a rent tribunal established under **section 3**;

“replacement costs” means the amount required, at current building costs and with due regard to -

- (a) the kind and nature of materials used;
- (b) the manner in which the dwelling was erected and finished,

to erect a dwelling similar to that for which a reasonable rent is to be determined;

"secretary" means the secretary of a rent tribunal appointed under **section 4(6)**;

"services" includes the use of any balcony, veranda, hall, lounge, corridor, common room, kitchen, bathroom, lavatory or other room, and any other privilege, amenity or facility accorded to a lessee by reason of his or her occupation of the leased dwelling;

"this Act" includes any regulation made and in force thereunder;

"unreasonable rent" means a rent that gives a lessor a higher yield than a reasonable rent would give to that lessor;

"value" with regard to -

- (a) a dwelling, means the replacement cost of the buildings and other improvements made to the land, minus a maximum of five per cent, or such other prescribed percentage, depreciation of such replacement cost for every year of the age of such dwelling depending on the standard of maintenance and repairs; and
- (b) the land on which the dwelling is situated, a value which a rent tribunal in all the circumstances of a particular case determines to be a reasonable rent value (which may or may not coincide with the market value) for such land, regard being had, inter alia, to the following —
 - (i) any municipal valuation;
 - (ii) any sworn valuation;
 - (iii) the purpose for which such land is used;
 - (iv) the position of the land and its surroundings;
 - (v) any other relevant factors.

Objects and application of Act

- 2. (1) The objects of this Act are —
 - (a) to unify, consolidate and amend the law relating to the regulation of rent and eviction of lessees and occupiers of residential dwellings;
 - (b) to prevent the exploitation of lessees by lessors due to the high demand

and limited supply of housing;

- (c) to regulate the relationship between lessors and lessees and particularly the circumstances which unfair practices are committed by lessors and lessees.

(2) The provisions of this Act do not apply to a dwelling the rent of which is controlled or determined under any other law.

PART 2 RENT TRIBUNALS

Establishment of rent tribunals

3. The Minister may by notice in the *Gazette*-
- (a) establish for any local authority area or for more than one local authority area a rent tribunal for adjudication of complaints or claims in terms of this Act;
 - (b) determine the seat of that tribunal;
 - (c) determine one or more places in the area concerned for the holding of sessions of that tribunal;
 - (d) alter the area for which that tribunal has been established by including therein or excising therefrom any local authority area or part thereof;
 - (e) abolish a tribunal established in terms of this section; and
 - (f) amend or withdraw any notice issued in terms of this section.

Constitution of rent tribunal and term of office of additional members

4. (1) A rent tribunal consists of –
- (a) the magistrate of the district for which a rent tribunal has been established, provided that the Minister responsible for magistrates must designate which magistrate will serve on the rent tribunal in the event that there are more than one magistrate available for that purpose; and
 - (b) not more than four additional members appointed by the Minister.

(2) The additional members contemplated in subsection (1)(a) must be appointed from members of communities residing within the local authority area or areas for which a rent tribunal has been established or is to be established, after the Minister has advertised a call for nomination of such members in a newspaper circulating in that area or areas.

(3) The magistrate contemplated in subsection (1)(a) is the chairperson of the rent tribunal.

(4) The Minister may on such conditions as he or she may determine appoint one or more persons as alternate additional members of a rent tribunal, and the chairperson of that tribunal may require of an alternate additional member to take the place of any absent additional member.

(5) Additional members or their alternates, if any holds office for a period of three years and may be reappointed for only one additional term.

(6) The Minister must in accordance with the Public Service Act appoint a person or second an employee in the public service established by section 2 of that Act to be the secretary of a rent tribunal, subject thereto that such person must possess legal qualifications from a tertiary institution.

Terms of conditions of additional members

5. (1) An additional member of a rent tribunal who is not employed in the public service on a full-time basis must be paid out of moneys appropriated by law such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the tribunal, such subsistence and travelling allowances, as may be determined by the Minister after consultation with the Minister responsible for finance.

(2) Upon the appointment of an additional member of a rent tribunal, the Minister may, in addition to the remuneration and allowances payable in terms of subsection (1), determine further conditions of service in respect of such member after consultation with the Commission.

Disqualification for appointment as additional member

6. A person may only be appointed as an additional member if he or she -
- (a) is a Namibian citizen;
 - (b) is not a member of the National Assembly or of a regional council established under section 2 of the Regional Councils Act, 1992 (Act 22 of 1992);
 - (c) is not an unrehabilitated insolvent;
 - (d) is over the age of 21 years;
 - (e) has not been convicted of an offence, other than a political offence committed before the date of Namibia's independence, for which he or she has been sentenced to a term of imprisonment without the option of a fine for a period of 12 months or more.

Vacation of office by additional member

7. (1) The office of an additional member of a rent tribunal becomes vacant if he or she-

- (a) becomes subject to a disqualification referred to in **section 6**;
- (b) submits his or her resignation in writing to the Minister;
- (c) is absent from three consecutive meetings of the rent tribunal without the consent of the chairperson;
- (d) is removed from office under subsection (2).

(2) The Minister, on the recommendation of a rent tribunal, may remove an additional member from office if the Minister is satisfied, after affording the member a reasonable opportunity to be heard-

- (a) that the member is mentally or physically incapable of efficiently performing his or her duties as a member; or
- (b) has been guilty of conduct which renders him or her unfit to serve as a member.

Meetings of rent tribunal

8. (1) The chairperson of a rent tribunal determines the times and places at which that rent tribunal must meet.

(2) The majority of all the members of a rent tribunal form a quorum for a meeting of the tribunal, except where the chairperson is required to make a ruling on undisputed complaints or applications under **Part 5**.

(3) At all meetings of a rent tribunal the chairperson or, if the chairperson is absent at any meeting of the tribunal, the other members present must elect a chairperson from amongst themselves to preside at the meeting.

(4) Subject to the provisions of **section 9**, the decision of the majority of the members of a rent tribunal present at a meeting of a rent tribunal is deemed to be a decision of that tribunal and in the event of an equality of votes in regard to any matter, the person presiding at that meeting has a casting vote in addition to his or her deliberative vote.

(5) (a) The chairperson of a rent tribunal must ensure that the secretary keeps minutes of all meetings of that rent tribunal, which must be kept at the offices of the chairperson of the tribunal.

(b) Any person may, in the prescribed manner, obtain copies of minutes contemplated in paragraph (a) against payment of a prescribed fee.

(6) No decision taken by a rent tribunal will be invalid merely by reason of a vacancy in the tribunal or because a person not entitled to sit as a member of the tribunal, sat as a member at the time when the decision was taken, if the decision was taken by the majority of the members of the tribunal present at the time and who were entitled to sit as members of the tribunal.

(7) A local authority may, at the request and at no cost to a rent tribunal, make a venue available for meetings of that tribunal.

Disclosure of conflict of interest

9. (1) A member of a rent tribunal may not participate in the deliberations or vote on any matter which is the subject of consideration at a meeting of that tribunal if in relation to that matter, the member has any interest, whether direct or indirect, which precludes that member from performing the functions of a member in a fair, unbiased and proper manner.

(2) If at any stage during a meeting of a rent tribunal it appears that a member has or may have any interest which may cause a conflict of interests to arise, that member must forthwith fully disclose the nature of such interest and leave the

meeting so as to enable the remaining members to discuss the member's disclosure and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests.

(3) If the chairperson has a conflict of interest which is so material that he or she cannot further participate in the meeting contemplated in subsection (2), the chairperson must forthwith inform the Minister who must as soon as possible appoint another magistrate to serve as chairperson of the rent tribunal for purposes of that meeting.

(4) A disclosure by a member in accordance with subsection (2), and the decision taken by the members in connection therewith, must be recorded in the minutes of that meeting.

(5) A member who contravenes subsection (1) or fails to comply with subsection (2) commits an offence and on conviction is liable to a fine not exceeding N\$ 50 000 or to imprisonment not exceeding two years or to both such fine and such imprisonment.

Powers and functions of rent tribunal

10. (1) A rent tribunal must fulfil the duties imposed upon it in terms of this Act, and must do all things necessary to ensure that the objectives of this Act are achieved.

(2) Without limiting the ambit of subsection (1), a rent tribunal must -

(a) investigate any complaints referred to that tribunal;

(b) consider any applications referred to the tribunal,

under Part 3.

Duties of secretary of rent tribunal

- 11.** (1) The secretary of a rent tribunal must –
- (a) keep a register of all lease agreements entered into in respect of leased dwellings situated in the area of jurisdiction of that rent tribunal, and of the rent charged in each case;
 - (b) receive the complaints and applications contemplated in **Part 5** in, and deal therewith as stipulated in that **Part**;
 - (c) perform the other functions and duties as assigned to him or her in terms of this Act or by the chairperson, and exercise the powers granted to him or her under this Act.

(2) The entries in the register referred to in subsection (1)(a) serve as *prima facie* proof of the facts contained therein.

PART 3
PROVISIONS RELATING TO LEASE AGREEMENTS, RENT AND
DWELLINGS

Lease agreement to be in writing

12. (1) Notwithstanding anything contained in any other law, all lease agreements entered into after the commencement of this Act must be in writing.

(2) If a lessor and a lessee before the commencement of this Act entered into a lease agreement that was not in writing or does not comply with the provisions of this Act, that lessor and lessee must conclude a written lease agreement within the prescribed period.

(3) A lessor must within the prescribed period and in the prescribed form and manner –

- (a) give notice of the conclusion of a lease agreement contemplated in subsections (1) and (2) and of the amount of the rent charged under that agreement, to; and
- (b) lodge a copy of that lease agreement with,

the secretary of the rent tribunal in whose area of jurisdiction the leased dwelling is situated.

(4) Any lessor who fails to comply with subsections (1), (2) or (3) commits an offence and is liable on conviction to a fine not exceeding N\$ 10,000 or imprisonment not exceeding six months or to both such fine and such imprisonment.

Register of lease agreements

13. (1) The secretary of a rent tribunal must register all lease agreements lodged with him or her under **section 12** in a register of lease agreements.

- (2) The register referred to in subsection (1) must contain-
 - (a) the prescribed particulars regarding the lease agreement;
 - (b) a specification of the leased dwelling;
 - (c) any other prescribed particulars.

(3) Upon registration of a lease agreement under subsection (1), a lessor is deemed to register the rent payable by the lessee in terms of that agreement with the rent tribunal concerned.

Provisions of a lease agreement

14. (1) A lease agreement contemplated in **section 12** is deemed to include terms, enforceable in a competent court, to the effect that -

- (a) the lessor must furnish the lessee with a written receipt for all payments received by the lessor from the lessee;
- (b) the receipt referred to in paragraph (a) must be dated and clearly indicate the address, including the street number and further description, if necessary, of a dwelling in respect of which payment is made, and whether payment has been made for rental, arrears, deposit or otherwise, and specify the period for which payment is made;
- (c) the lessor may require a lessee, before moving into the dwelling, to pay a deposit which, at the time, may not exceed an amount equivalent to an amount agreed to between the parties, which amount may not exceed one month's rent;
- (d) the deposit contemplated in paragraph (c) must be invested by the lessor in an interest-bearing account with a financial institution and the lessor must, subject to paragraph (g) pay the lessee such interest at the rate applicable to such account which may not be less than the rate applicable to a savings account with that financial institution, and the lessee may during the period of the lease request the lessor to provide him or her with written proof in respect of interest accrued on such deposit, and the lessor must provide such proof on request;
- (e) the lessee and the lessor must jointly, before the lessee moves into the dwelling, inspect the dwelling to ascertain the existence or not of any defects or damage therein to determine the lessor's responsibility, if any for rectifying any defects or damage or to register such defects or damage, as provided for in subsection (4);
- (f) at the expiration of the lease the lessor and lessee must arrange a joint inspection of the dwelling at a mutually convenient time to take place on the day of such expiration to ascertain if there was any damage caused to the dwelling during the lessee's occupation thereof;

- (g) on the expiration of the lease, the lessor may apply the deposit and interest referred to in paragraph (d) towards the payment of all amounts for which the lessee 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 be refunded to the lessee by the lessor not later than 14 days of restoration of the dwelling to the lessor;
- (h) the relevant receipts which indicate the costs the lessor incurred, as contemplated in paragraph (g), must be provided to the lessee as proof of the costs incurred by the lessor;
- (i) should no amounts be due and owing to the lessor in terms of the lease, the deposit, together with the accrued interest in respect thereof, must be refunded by the lessor to the lessee, without any deduction or setoff, within seven days of expiration of the lease;
- (j) failure by the lessor to inspect the dwelling in the presence of the lessee as contemplated in paragraphs (e) or (f) is deemed to be an acknowledgement by the lessor that the dwelling is in a good and proper state of repair, and the lessor will have no further claim against the lessee who must then be refunded, in terms of this subsection, the full deposit plus interest by the lessor;
- (k) should the lessee fail to respond to the lessor's request for an inspection as contemplated in paragraph (f), the lessor must, on expiration of the lease, inspect the dwelling within seven days from such expiration in order to assess any damages or loss which occurred during the duration of the lease agreement;
- (l) the lessor may in the circumstances contemplated in paragraph (k), without detracting from any other right or remedy of the lessor, deduct

from the lessee's deposit and interest the reasonable cost of repairing damage to the dwelling and the cost of replacing lost keys, if any;

- (m) the balance of the deposit and interest, if any, after deduction of the amounts contemplated in paragraph (l), must be refunded to the lessee by the lessor not later than 21 days after expiration of the lease;
- (n) the relevant receipts which indicate the costs which the lessor incurred, as contemplated in paragraph (l), must be provided to the lessee for inspection as proof of such costs incurred by the lessor;
- (o) should the lessee vacate the dwelling before expiration of the lease, without notice to the lessor, the lease agreement is deemed to have expired on the date that the lessor established that the lessee had vacated the dwelling but in such event the lessor retains all his or her rights arising from the lessee's breach of the lease agreement; and
- (p) any costs in relation to the lease agreement is payable by the lessee only upon proof of factual expenditure by the lessor.

(2) The standard provisions referred to in subsection (3) may not be waived by the lessee or the lessor.

(3) A lease agreement contemplated in this section must include the following information:

- (a) The names of the lessee and the lessor and their addresses in Namibia for purposes of formal communication;
- (b) the description of the dwelling which is the subject of that agreement;
- (c) the amount of rental of the dwelling to be paid in terms of that agreement and the manner in which the rental was calculated;

- (d) if rentals are not paid on a monthly basis, the frequency of rental payments;
 - (e) the amount of the deposit, if any;
 - (f) the lease period, or, if there is no lease period determined, the notice period requested for termination of the lease;
 - (g) obligations of the lessee and the lessor, which must not detract from the provisions of subsection (1) or the regulations relating to unfair practice;
 - (h) the amount of the rental, and any other charges payable in addition to the rental in respect of the property.
- (4) A list of defects registered in terms of subsection (1)(e) must be attached as an annexure to the lease agreement contemplated in this section.
- (5) A lessor must ensure that the provisions of subsections (3) and (4) are complied with.

Rent payable

15. The rent payable by a lessee to a lessor in respect of a leased dwelling must be reasonable rent.

Prohibition on the claiming of monies in excess of rent

16. (1) No lessor of any dwelling may claim or accept, and no lessee of such dwelling may offer in consideration of the grant, renewal or continuance of the lease thereof, the payment by any person of any bonus, premium or any other sum in addition to the rent, and neither the lessor nor the lessee may impose or accept any condition or enter into or carry out any agreement calculated to defeat the objects of this Act.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$ 20,000 or imprisonment not exceeding one year, or to both such fine and such imprisonment.

Repairs and replacements

17. (1) In the absence of a written agreement to the contrary, the lessor of a leased dwelling, and not the lessee, is responsible for repairs to the leased dwelling and for the replacement of essential equipment therein in so far as such repairs and replacement are necessitated by normal wear and tear, and no such lessor may recover in any way from such lessee any expenses incurred with regard to such repairs and replacement.

(2) The lessor of a leased dwelling, and not the lessee, is responsible for the payment of rates and taxes and other fees (except for fees and monies in respect of the supply of water, electricity and gas) which are payable to the local authority with regard to that dwelling and the grounds on which it is situated, and no lessor may claim such rates and taxes and other fees from the lessee in addition to the normal rent of which the secretary has been notified under **section 12**, or the amount of a reasonable rent as determined under **section 27 or 35**.

(3) If, upon the expiry of a lease agreement the lessor and lessee fail to agree on the amount of any damage other than normal wear and tear caused by a lessee to a leased dwelling, either party may refer a dispute for determination of the lessee's liability in the prescribed form to a rent tribunal in whose area of jurisdiction the dwelling is situated and the tribunal's determination will be final.

PART 4

PROVISIONS RELATING TO RECOVERY OF POSSESSION

Limitation of ejectment of lessees

18. (1) Notwithstanding the provisions of **section 42**, no order for the recovery of possession of a leased dwelling or for the ejectment of a lessee therefrom based on the fact of the lease having expired either by effluxion of time or in consequence of lawful notice, may be made by any court as long as the lessee continues to pay, within seven days of the due date, or is willing and ready to pay the rent in respect of that dwelling agreed upon with the lessor or determined under this Act, and complies with the other conditions of the lease.

(2) No suit for recovery of possession shall be instituted by a lessor against a lessee on the ground of non-payment of rent agreed upon with the lessor or determined under this Act, until the expiry of 90 days next after notice in writing of the demand of the rent due by the lessee has been served upon that lessee.

(3) No order for ejectment of a lessee may be made by a court in any suit for recovery of possession on the ground of arrears of rent agreed upon with the lessor or determined under this Act if the lessee -

- (a) pays or tenders in court such rent then due together with simple interest on the amount of arrears at the prescribed rate within a period of 90 days from the date of service of the summons of the suit; and
- (b) regularly thereafter pays or tenders in court such rent until the suit is finally decided and the lessee also pays the cost of the suit as directed by the court.

(4) A lessee who by virtue of the provisions of this section, remains in occupation of any dwelling after the expiry of the lease agreement in respect of such dwelling -

- (a) must as long as he or she so remains in occupation of that dwelling, observe all the terms and conditions of that agreement; and

- (b) is entitled to every benefit proceeding from the best utilisation and enjoyment normally associated with the occupation of that dwelling, as if the said lease were still in force.

(5) When a complaint has been lodged under **Part 5** in respect of a dwelling, no legal proceedings may be instituted for the ejection of the lessee of such dwelling based on the non-payment of rent before the rent tribunal or the chairperson of the rent tribunal (where he or she has to decide alone) has notified the lessor of that tribunal or chairperson's decision on the complaint: Provided that the provisions of this section does not apply if at the time of the institution of such proceedings rent is due and payable in respect of a period of six months or longer during which that dwelling was occupied by the lessee.

Recovery of possession

19. Subject to **section 18**, a lessor may recover possession of a leased premises on the grounds that -

- (a) the lessee has done or is doing material damage to the dwelling;
- (b) the lessee has been guilty of conduct which is a nuisance to occupiers of adjoining or neighbouring properties;
- (c) the dwelling is reasonably required, for personal occupation by the lessor or one or more co-lessors, or for occupation by his or her or their parent or child or children, or by a parent or a child or children of one of them, or by an employee in his or her or their employ; or
- (d) the dwelling is required on reasonable grounds for the purpose of a reconstruction or an alteration scheme: Provided that before any order for ejection or recovery of possession is made by the court on the grounds stated in this paragraph, the lessor must -
 - (i) lodge an undertaking that such scheme has been started and that

it will be carried out within a reasonable, specified time;

- (ii) furnish such security as the court may consider sufficient for the purpose of meeting any obligation to pay compensation to the lessee which may arise under subsection (3) in the event of any failure to carry out such undertaking; and
- (iii) satisfy the court that any permission necessary under any law for the carrying out of such scheme has been obtained from the authority from which it has in terms of such law to be obtained or on some other grounds which, regard being had to all the circumstances, the court deems to be sufficient.

(2) If a lessor has in any manner whatsoever caused or induced a lessee to vacate any dwelling on the grounds stated in subsection (1)(c), and such dwelling is without reasonable cause not occupied within one month from the date on which the lessee vacated the said dwelling, by the lessor or co-lessors, or by his or her or their parent or child, or by a parent or child of one of them, or by his or her or their employee, and is not uninterruptedly so occupied for a period of 12 consecutive months, the lessor commits an offence and is liable on conviction to a fine not exceeding N\$ 20,000 or imprisonment not exceeding one year, or to both such fine and such imprisonment, and the court convicting the lessor may, in addition, order him or her to compensate the lessee for any loss which the lessee can prove to have suffered as a direct consequence of that lessee's removal from the dwelling.

(3) An order referred to in subsection (2) has the effect of, and may be executed as if it were, a civil judgment in favour of the lessee.

(4) If a lessor has caused a lessee to vacate any dwelling on the grounds stated in subsection (1)(d), and the reconstruction or alteration scheme is not carried out in accordance with the undertaking filed by the lessor, the lessor is, unless he or she proves that the failure to carry out the scheme as aforesaid is due to circumstances beyond his or her control, commits an offence and is liable on conviction to a fine not exceeding not exceeding N\$ 20,000 or imprisonment not exceeding one year, or to

both such fine and such imprisonment, and the court convicting the lessor may, in addition, order him or her to compensate the lessee for any loss which the lessee can prove to have suffered as a direct consequence of that lessee's vacation of that dwelling.

(5) A lessor of a dwelling who, with intent to deprive the lessee of the peaceful enjoyment of the occupation of that dwelling and to induce that lessee by such means to vacate the dwelling -

- (a) threatens that lessee in any way (save with legal proceedings to collect rent which is actually in arrear); or
- (b) indulges in an activity which constitutes a nuisance to the lessee; or
- (c) refuses facilities or suspends services to which the lessee is entitled,

commits an offence and is liable on conviction to a fine not exceeding N\$ 20,000 or imprisonment not exceeding one year, or to both such fine and such imprisonment.

(6) If the lessor of a dwelling, without obtaining an order of court -

- (a) removes from that dwelling any property (or causes the removal of such property) belonging to the lessee or that dwelling without such lessee's consent; or
- (b) prevents a lessee from using or occupying that dwelling,

that lessor commits an offence and is liable on conviction to a fine not exceeding N\$ 20,000 or imprisonment not exceeding one year, or to both such fine and such imprisonment.

Death of lessee

20. In the event of death of a lessee, the right of lease devolves for a period of five years from the date of the lessee's death or such shorter period as may be prescribed to his or her successors in the following order, namely-

- (a) spouse;
- (b) children;
- (c) parents;
- (d) daughter-in-law, or son-in-law being the widow or widower of his or her predeceased son or daughter:

Provided that the successor in question has ordinarily been living in the leased dwelling with the deceased lessee as a member of his or her family up to the date of his or her death and was dependent on that lessee.

PART 5**COMPLAINTS AND APPLICATIONS TO RENT TRIBUNAL****Referral of complaint by lessee to rent tribunal**

- 21.** (1) A lessee may refer a complaint to a rent tribunal if-
- (a) a lessee has been required to pay an unreasonable rent for a dwelling situated within the area of jurisdiction of that tribunal; or
 - (b) a lessor committed an unfair practice as may be prescribed.

(2) A lessee that wishes to refer a complaint referred to in subsection (1) to a rent tribunal must do so by delivering a completed complaint to the secretary and to all affected parties in the prescribed form and manner.

Referral of application or complaint by lessor to rent tribunal

22. (1) A lessor may refer an application to a rent tribunal for authorization to charge a higher rent for a dwelling situated within the jurisdiction of that tribunal, than that which is registered under **section 13**, or which was determined to be a reasonable rent by a rent tribunal or an appeal board in a previous decision.

(2) A lessor may refer a complaint to a rent tribunal if a lessee commits an unfair practice as may be prescribed.

(3) A lessor that wishes to refer an application referred to in subsection (1) or a complaint referred to in subsection (2) to a rent tribunal must do so by delivering to the secretary and to all affected parties a completed application in the prescribed form.

Procedure on receipt of complaint

23. (1) Upon service in the prescribed manner of a complaint referred to in **section 21 or 22** upon a lessor or lessee, as the case may be, that party must indicate to the secretary in writing within 14 days of receipt of the complaint whether that party denies or admits the allegations contained in the complaint.

(2) Upon receipt of that other party's reply, or expiry of the period referred to in subsection (2) (whichever event takes place first), the secretary must submit all the documents concerning the complaint to the chairperson, together with the comments of an inspector who has investigated the matter, if such inspector has been appointed by the secretary for that purpose.

Procedure on receipt of application by lessor

24. (1) Upon service in the prescribed manner of an application contemplated in **section 22**, together with the prescribed documents supplied by the lessor, the lessee must raise objections (if any) to the application within 14 days after

receipt of the application, stating reasons and submitting affidavits or solemn declarations, if any, in support thereof.

(2) Failure on the part of a lessee within the prescribed period mentioned in subsection (1) to object to an application contemplated in that subsection to charge a higher rent than the lessee has to pay, is deemed to be acquiescence in the proposed increase.

(3) Upon receipt of the lessee's objections and documents contemplated in subsection (1), or expiry of the period referred to in subsection (1) (whichever event takes place first), the secretary must submit all the documents concerning the application in question to the chairperson, together with the comments of an inspector who has investigated the matter, if such inspector has been appointed by the secretary for that purpose.

Functions of chairperson upon receipt of complaint or application

- 25.** (1) The chairperson of a rent tribunal must –
- (a) (i) consider each complaint referred to in **section 21 or 22**, on submission to him or her by the secretary of all documents that have a bearing on the matter;
 - (ii) decide personally in the manner stipulated in **section 27** on each complaint which is not disputed or denied by the lessor or lessee, as the case may be and which in his or her opinion should not be referred to the rent tribunal;
 - (iii) refer each complaint disputed or denied by the lessor, and each complaint not disputed or denied by the lessor or lessee, as the case may be but which as a result of any special circumstances should in his or her opinion be considered by the full rent tribunal, to that tribunal to be considered at its next meeting, and he or she must summon each witness in the prescribed form

and manner whose evidence in his or her opinion may prove to be of importance, to attend such meeting;

- (b) (i) consider each application referred to in **section 22**, on submission by the secretary to him or her of all the documents that have a bearing on the matter;
 - (ii) decide personally in the manner stipulated in **section 27** on each application which is not disputed or denied by the lessee and which in his or her opinion should not be referred to the rent tribunal;
 - (iii) refer each application disputed or denied by the lessee, and each application not disputed or denied by the lessee, but which as a result of any special circumstances should in his or her opinion be considered by the full rent tribunal, to that tribunal to be considered at its next meeting, and he or she must summon each witness in the prescribed form and manner whose evidence in his or her opinion may prove to be of importance, to attend such meeting;
- (c) authorise or order personally in the prescribed form and manner, at the request of a lessor or a lessee, and without referring the matter to the rent tribunal concerned, a proportionate increase or reduction as the case may be, of the rent registered under **section 13**, or of a reasonable rent determined by a rent tribunal or an appeal board under **section 27 or 35**, when the assessment rates and taxes and other monies levied by the local authority, and for the payment of which the lessor is responsible, are increased or reduced.

(2) Decisions, authorisations or orders by the chairperson of a rent tribunal given under subsection (1)(a)(ii), subsection (1)(b)(ii) or subsection (1)(c) are for all purposes deemed to be decisions, authorisations or orders by that tribunal.

PART 6
PROCEEDINGS OF RENT TRIBUNAL

Determination of complaint or application by rent tribunal

26. (1) For purposes of hearing any complaint or application filed with the rent tribunal under **Part 5**, a rent tribunal may –

- (a) summon any person who in its opinion may be able to give material information concerning the subject of the investigation or who it presumes or believes has in that person's possession or custody or under that person's control any book, document or thing which has any bearing upon the subject of the complaint or the application, as the case may be, to appear before it at a date, time and place specified in the summons, to be questioned, or to produce that book, document or thing and the rent tribunal may retain for examination any book, document or thing so produced;
- (b) call, and by its chairperson, administer an oath to, or accept an affirmation from, any person present at the investigation who was or may have been summoned under **section 25(1)(a)(iii) or section 25(1)(b)(iii)**, and may question that person and require him or her to submit any book, document or thing in his or her possession or custody or under his or her control;
- (c) at all reasonable times enter and inspect any premises for the purpose of hearing that complaint or application;
- (d) employ any competent valuator or other technical adviser to assist it on such conditions and at such remuneration as determined by the Minister from time to time.

(2) A summons requiring of any person to appear before a rent tribunal or to submit any book, document or thing to the tribunal, must –

- (a) be in the form prescribed by regulation;
- (b) be signed by the chairperson or the secretary of the tribunal; and
- (c) be served -
 - (i) in the same manner as a subpoena issued by a magistrate's court in a criminal case;
 - (ii) by prepaid registered post addressed to the person concerned at the place where the dwelling of which he or she is the lessee is situated; or
 - (iii) at the address known to the rent tribunal:

Provided that if it is proved that such summons has not reached the lessee concerned, or reached him or her later than 24 hours before the time the rent tribunal hearing was due to commence, the summons will be deemed not to have been properly served.

- (3) If any person –
 - (a) duly summoned under this section, **section 25(1)(a)(iii) or section 25(1)(b)(iii)** fails, without sufficient cause, to attend at the date, time and place specified in the summons, or to remain in attendance until excused by the chairperson from further attendance; or
 - (b) called in terms of subsection (1)(b) -
 - (i) refuses to be sworn or to make affirmation as a witness;
 - (ii) fails, without sufficient cause, to answer fully and satisfactorily to the best of his or her knowledge and belief all questions

lawfully put to him or her concerning the subject of the complaint or application concerned; or

- (iii) to produce any book, document or thing in his or her possession or custody or under his or her control which has any bearing upon the subject of the complaint or application concerned,

that person commits an offence: Provided that the rules of law with regard to privilege, as applicable to a witness subpoenaed to give evidence before a court of law, or to produce any book, document or thing applies in connection with the questioning of such person or the production of such book, document or thing.

- (4) Any person who –
 - (a) wilfully hinders the chairperson, the secretary or any member of a rent tribunal in the exercise of any of the powers conferred upon him or her by this Act;
 - (b) while any proceedings of a rent tribunal are in progress, wilfully insults the chairperson or any member of the tribunal taking part in the proceedings; or
 - (c) wilfully interrupts such proceedings or otherwise misconducts himself or herself at the place where such proceedings are in progress,

commits an offence.

(5) Any witness who, having been sworn in or having made an affirmation, gives a false reply to any question material to the issue and lawfully put to him or her, or who makes a false statement on any matter, knowing such reply or statement to be false, commits an offence.

- (6) Any person –
 - (a) convicted of an offence under subsections (3) or (4) is liable to a fine not exceeding N\$ 10,000 or imprisonment not exceeding one month, or to both such fine and such imprisonment; and
 - (b) convicted of an offence under subsection (5) is liable to a fine not exceeding N\$ 20,000 or imprisonment not exceeding one year, or to both such fine and such imprisonment.

Orders and authorizations of rent tribunal relating to complaints or applications

27. (1) When after considering all the evidence relating to a complaint under **Part 5** and the rent tribunal (or the chairperson of the rent tribunal when he or she has to decide alone under **section 25(1)(a)(ii)**) is satisfied that such complaint is well founded, that tribunal (or chairperson) must –

- (a) order the lessor to reduce the rent which the lessee has to pay for the dwelling, to an amount which the rent tribunal (or the chairperson thereof, as the case may be), determines to be a reasonable rent therefor; and
- (b) may further order the lessor forthwith to refund to the lessee, as from the date upon which the complaint was delivered to the lessor, such sum as has been paid in excess of the amount which the rent tribunal (or the chairperson thereof, as the case may be) determines to be a reasonable rent, less any arrear rent, if any owing by the lessee:

Provided that where any such complaint relates to any dwelling forming part of a group of dwellings in the same building or complex, the rent tribunal may-

- (i) also investigate the reasonableness of the rent which has been charged for the other dwellings in the said building or complex;
- (ii) if the tribunal is satisfied that the rent charged for any of the other dwellings therein is unreasonable, order the lessor to reduce the rent which the lessee or lessees concerned are required to pay for such other dwellings, to an amount which the tribunal determines to be a reasonable rent therefor; and
- (iii) further order the lessor forthwith to refund to the said lessee or lessees, as from the date upon which the said complaint was delivered to the lessor, such sum as has been paid in excess of the amount the rent tribunal determines to be a reasonable rent, less any arrear rent owing by the said lessee or lessees;

(2) Where, the complaint contemplated in subsection (1) relates to a prescribed unfair practice, and the tribunal is of the view that an unfair practice exists, it may—

- (a) rule that a person must comply with a provision of this Act;
- (b) where it would appear that the provisions of any law have been or are being contravened, refer such matter for an investigation to the relevant competent body or local authority;
- (c) 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—
 - (i) overcrowding;
 - (ii) unacceptable living conditions;

- (iii) exploitation of lessees; or
- (iv) lack of maintenance.

(3) When an application by a lessor contemplated in **section 22** has been duly considered in accordance with the provisions of this Act, and the rent tribunal (or the chairperson thereof where he or she has to decide alone under or **section 25(1)(b)(ii)**) is satisfied that such application should be granted, it (or he or she) may authorise the lessor to increase the rent to an amount which the tribunal (or the chairperson thereof, as the case may be) deems to be reasonable.

(4) If a rent tribunal (or the chairperson thereof where he or she has to decide alone) is of the opinion that a complaint or an application under **Part 5** was vexatious or was made without any reasonable expectation of a favourable result, that tribunal (or chairperson) may order the person who lodged the complaint, or made the application, to pay to the lessor or lessee (as the case may be) a sum not exceeding the prescribed amount to compensate such lessor or lessee for his or her expenses in connection with the hearing.

(5) An order for the payment of any amount under subsections (1) or (4) has the effect of a civil judgement in favour of the lessee or the lessor (as the case may be) and may be executed as if it were such a judgement: Provided that no writ of execution may be issued before the period of 30 days referred to in **section 33** has expired, and if application has within that period been made for a review of the order by the appeal board, the issue of such writ must be stayed pending the decision of the appeal board.

(6) An authorisation under subsection (3) to increase rent may be made retrospective to the date on which the lessor's application for authorisation to increase the rent was delivered to the lessee, but not for a period exceeding six months: Provided that-

- (a) the lessor may not be authorised to increase the rent with retrospective effect during the currency of a lease for a fixed period, unless -

- (i) the lessor gave written notice to the lessee before entering into such lease that he or she intended increasing the rent with the permission of the rent tribunal concerned, duly granted in accordance with the provisions of this Act, to an amount equal at least to that authorised by the said rent tribunal; and
 - (ii) a clause with a similar effect was included in the lease;
- (b) in the case of a lease for an indefinite period, the lessor may not increase the rent with retrospective effect unless he or she gave the lessee written notice of one month (or of such other period in force as a period of notice under the lease) of his or her intention to apply to the rent tribunal for authorisation to increase the rent.

(7) When a complaint by a lessee that he or she is charged unreasonable rent has been duly considered in accordance with the provisions of this Act, or when a rent tribunal has, under **section 31** reconsidered its decision or that of its chairperson (where he or she had to decide alone) in regard to a complaint, and the rent tribunal is satisfied that a reasonable rent exceeds the rent actually charged by the lessor, that tribunal may authorise the lessor, if the lessor applies therefor, and without further investigation, to increase the rent to such an amount as is found to be reasonable by that tribunal.

(8) When an application under **section 22** has been duly considered in accordance with the provisions of this Act, or when a rent tribunal has, under **section 16** reconsidered its decision or that of its chairperson (where he or she had to decide alone) in regard to an application, and the rent tribunal is satisfied that a reasonable rent is less than the rent actually charged by the lessor, that tribunal must order the lessor to reduce the rent payable by the lessee for the dwelling to an amount which that tribunal determines to be a reasonable rent therefor.

Signing and service of orders and authorisations of rent tribunal

28. An order or authorisation issued under **section 27** by a rent tribunal (or by the chairperson of a rent tribunal, where he or she has to decide alone), must be signed by the chairperson and the secretary of the rent tribunal and must be served by being sent by prepaid registered post, or by being delivered by the secretary in person—

- (a) to the lessor or to the agent (if any) of such lessor at the last known place of abode or place of business of such lessor or agent; and
- (b) to the lessee at the dwelling to which the order or authorisation relates or at his or her last known postal address.

Effect of an order to reduce rent

29. (1) The effect of an order under **section 27** to reduce rent is that no rent in excess of the amount to which it has thereby been reduced, shall be payable by the lessee or any subsequent lessee to the lessor or any subsequent lessor in respect of the dwelling to which the order relates.

(2) The production by any such lessee of the order or a copy of an order under **section 27** certified under the hand of the chairperson of the rent tribunal concerned is a complete defence to any legal proceedings —

- (a) by or on behalf of any such lessor against such lessee to recover in respect of that dwelling any amount in excess of the amount to which the rent has been reduced by the order; or
- (b) to recover from such lessee possession of, or to eject him or her from that dwelling on the grounds of non-payment of so much of the rent as represents such excess.

Non-compliance with order of rent tribunal

30. (1) (a) If, after a rent tribunal has made an order whereby a reasonable rent for any dwelling is determined, any lessor knowingly requires or permits a lessee to pay a rent for such dwelling in excess of the amount so determined, that lessor, irrespective of whether he or she was the lessor of that dwelling at the date when the said order was made, or not, commits an offence and is liable on conviction to a fine not exceeding N\$ 20,000 or to imprisonment not exceeding one year, or to both such fine and such imprisonment, and the court convicting him or her may, in addition to any penalty which it may impose, order him or her forthwith to refund to the lessee any sum paid to him or her by such lessee in excess of the said amount.

(b) An order referred to in paragraph (a) has the effect of, and may be executed as if it were, a civil judgment in favour of the lessee.

(2) (a) If, after a rent amount has been registered under **section 13**, a lessor knowingly requires or permits a lessee to pay a rent for such dwelling in excess of the amount of the rent so registered, he or she, irrespective of whether he or she was the lessor of that dwelling at the date when the said notice was given, or not, commits an offence and is liable on conviction to a fine not exceeding N\$ 20,000 or to imprisonment not exceeding one year, or to both such fine and such imprisonment, and the court convicting him or her may, in addition to any penalty which it may impose, order him or her forthwith to refund to the lessee any sum paid to him or her by such lessee in excess of the said amount.

(b) An order referred to in paragraph (a) has the effect of, and may be executed as if it were, a civil judgment in favour of the lessee.

Variation or rescission of order of rent tribunal

31. (1) A rent tribunal may, on good cause shown, reconsider and confirm, vary or rescind any decision given by it or by the chairperson (where he or she had to decide alone).

(2) Notwithstanding the provisions of subsection (1), a rent tribunal does not have the power to reconsider any decision already reviewed by an appeal board, or in connection with which application has been made for review,

(3) Notwithstanding subsection (2), if at any time after a decision has been reviewed by an appeal board, the rent tribunal receives written representations to the effect that good cause exists for the variation or rescission of the decision of such appeal board, the rent tribunal must, after proper investigation, forward the record of its proceedings, together with its recommendations thereon, to the appeal board to be constituted by the Minister to review the decision of the first-mentioned appeal board.

Register of complaints and applications

32. The secretary of a rents tribunal must keep a register of complaints received and complaints resolved with such details as may be prescribed and annually provide the local authority in whose are of jurisdiction a dwellings are situated in respect of which complaints have been received with a list of complaints received and complaints resolved in such format as may be prescribed.

PART 7 APPEAL BOARD

Review of decision of rent tribunal

33. (1) Any lessor or lessee who is aggrieved by any decision of a rent tribunal (including any decision given by that tribunal upon reconsideration in terms of **section 31(1)**) may within 30 days after the date of delivery, in terms of **section 28**, of the decision in question, or within such extended period as may on good cause be allowed by the appeal board, and on payment of the prescribed deposit, apply to the secretary of such rent tribunal to have such decision reviewed by an appeal board, which the Minister must constitute for the purpose of such review.

(2) The deposit referred to in subsection (1) will be forfeited if the matter

at such review is decided wholly against the applicant, or if the applicant withdraws his or her application for review.

Constitution of appeal board

34. (1) An appeal board consists of three members appointed by the Minister on the conditions determined by him or her.

(2) The Minister must designate one of the members of the appeal board as chairperson, who must be a magistrate with at least ten years experience as magistrate or a legal practitioner of not less than ten years' standing.

(3) The other two members of the appeal board must have experience or knowledge of the value of property and may not be members of a rent tribunal or officers or employees of the State.

Powers of appeal board

35. (1) An appeal board may, subject to the provisions of this Act -

- (a) confirm, vary or reverse the decision of the rent tribunal;
- (b) if the record of the proceedings does not contain sufficient evidence or information to enable the appeal board to give a decision, remit the matter to the rent tribunal and direct it to take such further evidence or to furnish such additional information as the appeal board may deem necessary;
- (c) take such other course as seems to it best calculated to dispose of the proceedings as justly, promptly and cheaply as possible.

(2) Any order of a appeal board given under subsection (1)(a), must for all purposes be deemed to be an order of the rent tribunal, whose decision was reviewed.

(3) There is no appeal from a decision of an appeal board.

(4) The provisions of **sections 10 and 26** apply with the changes necessitated by the context in respect of any steps which it may be necessary for a rent tribunal to take in consequence of the remittal to it under subsection (1)(b) of any matter.

(5) (a) The chairperson of an appeal board must keep or cause to be kept complete records of the proceedings at a review.

(b) Within seven days after completion of the review that chairperson must forward a complete record of the proceedings to the Minister.

(c) That record must be kept by the Minister or an officer appointed by him or her.

(6) A lessee or lessor has the right, if he or she so desires, to appear before an appeal board and be assisted or represented by a legal or other representative.

Remuneration, allowances and fees of members of appeal board

36. The members of an appeal board who are not officers or employees in the public service must be paid such remuneration, allowances or fees as the Minister may determine from time to time.

PART 8 INSPECTORATE

Appointment of inspectors

37. (1) The Minister may, subject to the provisions of the Public Service Act appoint inspectors to carry out the duties and functions assigned to them under this Act.

(2) Every inspector must be furnished with a prescribed certificate, signed by an officer designated for that purpose by the Minister.

Powers of inspectors

38. (1) Upon the production of a certificate referred to in **section 36(2)**, an inspector may, for any purpose connected with carrying out of the provisions of this Act -

- (a) at all reasonable times require to be admitted to any dwelling if he or she requires information with regard to that dwelling;
- (b) while he or she is in the dwelling, or at any other reasonable time, question any person personally or by letter who in his or her opinion may be able to furnish any information desired by him or her;
- (c) require from any person the production then and there or at a time or place fixed by him or her of all books and documents which in his or her opinion may afford evidence relevant to the enquiry upon which he or she is engaged, and examine and make extracts from and copies of any such book or document, and require an explanation of any entry in any such book or document:

Provided that any person who is questioned, or required to give an explanation or to produce books or documents, under this section, is entitled to all the privileges to which a person giving evidence before a court of law is entitled.

(2) An interpreter may accompany an inspector at the inspector's request to any premises and for the purposes of this section any such interpreter is, while acting under the lawful direction of the inspector he or she accompanies, deemed to be an inspector.

(3) Any person by whom any premises are occupied, and any employee of such person, must upon the request of an inspector, provide to the inspector such

assistance as may be required by him or her to enter the premises or to exercise on such premises any of his or her powers under subsection (1).

- (4) Any person who -
 - (a) makes any statement to an inspector, which is false in any material particular, knowing the same to be false;
 - (b) refuses or fails to answer to the best of his or her ability any question which an inspector in the lawful discharge of his or her duties has put to that person;
 - (c) hinders or obstructs an inspector in the lawful discharge of his or her duties;
 - (d) falsely pretend to be an inspector,

commits an offence and liable on conviction to a fine not exceeding N\$ 10,000 or to imprisonment not exceeding six months, or to both such fine and such imprisonment.

Duty of confidentiality

39. An inspector, a secretary, or any member of a rent tribunal or an appeal board who discloses, except when required to do so as a in a court of law, or for the purposes of this Act, any information in relation to any person, establishment or business, acquired in the exercise of his or her powers under this Act, or in the performance of his or her duties in carrying out the provisions of this Act, commits an offence and is liable on conviction to a fine not exceeding N\$ 10,000 or to imprisonment not exceeding six months, or to both such fine and such imprisonment.

PART 9

PROMOTION OF RENTAL HOUSING

Responsibility to promote rental housing

- 40.** The Government of the Republic of Namibia must -
- (a) 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 revitalisation and resuscitation; and
 - (iii) correct distorted patterns of residential settlement by initiating, promoting and facilitating new development in or the redevelopment of affected areas;
 - (b) facilitate the provision of rental housing in partnership with the private sector.
- (2) Measures introduced in terms of subsection (1) must –
- (a) optimise the use of existing urban and rural municipal and transport infrastructure;
 - (b) redress and inhibit urban fragmentation or sprawl;
 - (c) promote higher residential densities in existing urban areas as well as in areas of new or consolidated urban growth; and
 - (d) mobilise and enhance existing public and private capacity and expertise in the administration or management of rental housing.

(3) The Government must introduce a policy framework, including norms and standards, on rental housing to give effect to subsection (1).

(4) Regional councils and local authorities must pursue the objects of subsection (1) within the national policy framework on rental housing referred to in subsection (3), and within the context of broader national housing policy in a balanced and equitable manner and must accord rental housing particular attention in the execution of functions, the exercise of powers and the performance of duties and responsibilities in relation to housing development.

(5) The Minister may cause the National Housing Enterprise, established under section 2 of the National Housing Enterprise Act, 1993 (Act No. 5 of 1993) to introduce a rental subsidy housing programme, as a national housing programme, or other assistance measures, to stimulate the supply of rental housing property for low income persons.

(6) Parliament may annually appropriate for the purposes of the National Housing Enterprise under subsection (5) any amount to finance such a programme contemplated by that subsection.

(7) A separate account of income and expenditure in respect of such programme must be kept by the National Housing Enterprise.

PART 10

GENERAL AND SUPPLEMENTARY PROVISIONS

Notice to vacate a dwelling

41. (1) (a) When a lessor gives notice to a lessee to vacate a dwelling he or she must do so in writing, stating the reasons, and a copy of such notice must be lodged by the lessor with the secretary of the rent tribunal in whose area of jurisdiction the dwelling is situated immediately after the notice has been served on the lessee.

(b) Any person who fails to comply with the provisions of subsection (1)(a)

commits an offence and is liable on conviction to a fine not exceeding N\$ 5,000 or to imprisonment not exceeding three months, or to both such fine and such imprisonment.

(2) If in any notice to a lessee to vacate any dwelling the lessor has knowingly given any reason which is false, or made a false statement, that lessor commits an offence and is liable to a fine not exceeding N\$ 20,000 or imprisonment not exceeding one year, or to both such fine and such imprisonment, and the court which convicts that lessor may, in addition, order him or her to compensate the lessee for any loss which the lessee may prove to have suffered as a result of having acted in terms of such notice.

Notice period

42. When a lessor gives notice to a lessee to vacate a dwelling, such lessor must give notice of at least three months, irrespective of whether a lease agreement provides for a period of notice or not: Provided that an employee who leases a dwelling from his or her employer as a condition of service must vacate the dwelling within 14 days after termination of his or her services unless otherwise agreed between the lessor and lessee.

Jurisdiction of magistrates' courts

43. Notwithstanding anything to the contrary contained in any other law, a magistrate's court has jurisdiction to impose any penalty prescribed by and to make any order of court provided for in this Act.

General offences and penalties

44. Any person convicted of contravening any provision of this Act, or of failing to comply with any requirement or direction given in terms of this Act, where no penalty has been expressly provided, is liable to a fine not exceeding N\$ 10,000 or to imprisonment not exceeding six months or to both such fine and such imprisonment.

Regulations

45. (1) The Minister may make regulations not inconsistent with this Act –

- (a) prescribing rules for the conduct of proceedings of rent tribunals, the forms to be used and the notices to be given by such tribunals in connection with the exercise of their functions;
- (b) prescribing the procedure to be adopted, the forms to be used, and the notices to be given in connection with the review of any decision of a rent tribunal by an appeal board, or in connection with any proceedings under **section 31**;
- (c) empowering rent tribunals generally or for particular areas, to require lessors of dwellings within the respective areas of jurisdiction of such tribunals to furnish information, either at regular intervals or on such occasions as the tribunal concerned may deem necessary, and prescribing the forms or returns to be used for that purpose;
- (d) in relation to the exercise of their functions and the carrying out of their duties by inspectors;
- (e) in relation to an unfair practice including but not limited to –
 - (i) the changing of locks;
 - (ii) deposits;
 - (iii) damage to property;
 - (iv) demolitions and conversions;
 - (v) forced entry and obstruction of entry;

- (vi) intimidation;
 - (vii) issuing of receipts;
 - (viii) lessee committees;
 - (ix) local authority services;
 - (x) nuisances;
 - (xi) overcrowding and health matters;
 - (xii) lessee activities;
 - (xiii) maintenance;
 - (xiv) reconstruction or refurbishment work; or
- (f) in relation to any matter which is required or permitted to be prescribed under this Act;
- (g) generally in relation to all matters which it considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

(2) Any regulations promulgated under this section may prescribe penalties for any contravention thereof, or failure to comply therewith, not exceeding a fine of N\$ 20,000 or imprisonment of one year.

Repeal of laws

- 46.** The Rent Ordinance, 1977 (Ordinance 13 of 1977) is hereby repealed.

Short title

47. This Act is called the Rents Act, 2016 and comes into operation on the date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) for different provisions of this Act.

WRITTEN SUBMISSIONS ON THE DRAFT RENTS BILL, 2017

Name of Stakeholder : _____

Date: _____

	Section in the Bill on which you have to a comment	Comment	Suggested change/amendment	Other Remarks
1.				
2.				
3.				
4.				
5.				
6.				
etc				