

NAMA BREAKFAST- 18 NOV 2011

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TOPIC: THE LEGALITY OF CUTTING ELECTRICITY

THE SCENARIO:

- ❑ THE CHAIRMAN SITS FIRMLY PLANTED IN HIS CHAIR FURIOUS ABOUT LEVY DEFAULTERS NOT PAYING THEIR LEVIES SURROUNDED BY HIS SIMILAR FRUSTRATED TRUSTEES STARING THE BODY CORPORATE'S ATTORNEY DIRECTLY IN THE EYES AS HE DEMANDS
- ❑ TO RESOLVE TO CUT OFF THE ELECTRICITY TO ANY OWNERS UNIT WHERE THE LEVY ACCOUNT IS IN ARREARS.
- ❑ THE ATTORNEY HESITATES... IS THE BODY CORPORATE ENTITLED TO TAKE SUCH STEPS? IS SUCH AN ACT LEGAL? WHAT LEGISLATION IS PERTINENT?
- ❑ WHAT ABOUT A LANDLORD, CAN HE CUT OFF A TENANTS ELECTRICITY?

THE NAIL - BITING QUESTION:

- WHAT EXACTLY IS THE LEGAL POSITION REGARDING A BODY CORPORATE TERMINATING THE ELECTRICAL SUPPLY TO LEVY DEFAULTERS UNITS?**

- AND WHAT ABOUT A LANDLORD DOING IT TO A TENANT**

There are 3 applicable pieces of legislation
(there were 4, but 1 has been repealed):

- Section 14(1) of **The Electricity By Laws of the Greater Johannesburg Metropolitan Municipality** provides that when any consumption charges due to the Council for electricity supplied are in arrear, the council may at any time without notice disconnect the **supply** to the electrical installation.

What now is the “supply” – Let’s look at some definitions in the By-Laws

“service connection” – means the cable or conductor leading from the supply main to the point of supply of the electrical installation and includes any high voltage or other equipment connected to that cable or conductor, any meter and any board, panel or other device to which the meter is fixed and all installation work and apparatus associated with the said equipment, meter or other device installed by the council;

“supply” – means a supply of electricity from the supply main;

“supply main” – means any cable or wire forming that part of the council’s electricity distribution system to which service connections may be connected;

Effect of the By-Laws - Conclusion

- The Council may disconnect the “Supply”
- But what is the “Supply”
- In a Sectional Title Scheme Scenario – normally Electricity is supplied to a main DB board for the scheme. The Scheme pays the Council for the total usage of all occupants – THEN, electricity is distributed to each of the units in the Scheme, where separate meters measure the consumption and the owner of the unit gets billed for the individual usage.
- In a Landlord/Tenant Scenario - Electricity is supplied to a main DB board for the property, measured by the meter, billed to the owner and passed onto the tenant.
- So it seems that the Council may terminate the “supply” by disconnecting the meter or board.

Section 16 of **The Rental Housing Act, 1999** provides that any person who unlawfully **shuts off the utilities** to a rental housing property shall be guilty of an offence and liable on conviction to a fine or imprisonment not exceeding 2 years or to both such fine and imprisonment.

What now are the “utilities” – Let’s look at a definition

- “Utilities” - are not defined in the Rental Housing Act
- “Utilities” - are legally defined as “a commodity or service, such as electricity or water, that is provided by a public utility.”

Before we leave the - Rental Housing Act – Lets look at the – Procedural Regulations - ito the Act

- **9. Spoliation and Interdict Procedure**
- (1) In terms of s 13 (12) (c) of the Act, a tenant or landlord may lodge a complaint on an urgent basis for **spoliation** or interdict.
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- (2) The staff of the Tribunal shall conduct any preliminary enquiry and investigate the circumstances surrounding the complaint to ascertain the urgency thereof, and will advise the Tribunal accordingly.
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- (3) The respondent will be served immediately with the **Tribunal's interim ruling** made, together with a copy of the complainant's statement.

Lets take a last look at the – Unfair Practise Regulations - ito the Act

- **3. Leases**
- (b) A landlord and a tenant may include in a lease agreement terms and conditions **not** prohibited by these **regulations, the Act or any other law**.....
- (c) A lease agreement must **not** include any provision which
 - (ii) excludes liability of either party for failing to comply with a duty under **the lease, these regulations, the Act or any other law**.

12. Municipal Services

- (1) A landlord who is obliged by law or in terms of the express or implied terms of the lease to provide water, **electricity** or gas services to a tenant, must –
 - (a) Provide such service;
 - (b) **not cause the non supply** or interrupted supply of services to a dwelling without a court order, except –
 - (i) In an emergency; or
 - (ii) after reasonable notice to the tenant to do maintenance, repairs or renovations

14. **Offences and Penalties**

Should the landlord or tenant **fail to comply** with any **provision of the Act or the Regulation** or a ruling of the Tribunal, and found guilty, a **fine** may be imposed or **imprisonment** not exceeding two years or to both such fine and such imprisonment.

Electricity Act, 1987, now repealed by the Electricity regulation Act

- Section 27(3) of The **Electricity Act, 1987** provides that any person, who without legal right (the proof of which shall be upon him) **cuts off** or damages or **interferes** with **any apparatus for generating, transmitting or supplying electricity**, shall be guilty of an offence and liable on conviction to a fine not exceeding the amount which the Minister may from time to time prescribe by regulation or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

S37 (2) Sectional Titles Act

- (2) Liability for contributions levied under any provision of subsection (1), save for special contributions contemplated by subsection (2A), accrues from the passing of a resolution to that effect by the trustees of the body corporate, **and may be recovered by the body corporate by action in any court (including any magistrate's court) of competent jurisdiction from the persons who were owners of units**, holders of exclusive use areas and holders of real rights of extension at the time when such resolution was passed.....

Summary of the Legislation

- The **By Laws** obviously do not entitle the Body Corporate to take such similar steps as the Council is entitled to take.
- The **Rental Housing Act** applies to a landlord/tenant scenario (**not** to a body corporate/owner **OR** to a body corporate/tenant scenario and deems it an offence for the Landlord to shut off the utilities to a unit occupied by a tenant.
- The **Sectional Titles Act** directs a specific avenue to recover outstanding levies.

What does the Common Law say:

- If a Landlord/Body Corporate does terminate a defaulting tenant/owner's electrical supply, the owner may bring what is called a **SPOLIATION APPLICATION** to Court. In essence, spoliation means that a party's peaceful possession of an item has been unduly disrupted. Plainly put the remedy is available where a party disturbs this peaceful possession and acts by taking "the law into his own hands". In almost all cases the owner will succeed in his application to Court. The Court will order the electricity to be turned back on and will order the Landlord/Body Corporate to pay back to the tenant /owner the legal costs of the court application which the tenant/owner has incurred.

How do the Courts view termination of electricity:

- In the case of *Queensgate Body Corporate v Claesen in 1998*. The court stated in its judgment that the termination of electricity is “a clear act of spoliation”.

THE VERDICT

- The Landlord/Body Corporate is **not** entitled to terminate their defaulting tenant/owner's electrical supply to a property.
- In the landlord/tenant scenario such an act constitutes an **offence** and attracts a criminal sanction.
- The attorney has at last answered the Chairman. The Chairman sits back somewhat relieved and in a position to consider other alternatives with his Trustees.
- The position has also been cleared iro the Landlord/Tenant relationship