Estate agencies being sued under section 54 of the Consumer Protection Act

In a recent webinar hosted by Marlon Shevelew, he made the remark that more and more rental agents are being sued in terms of section 54 of the *Consumer Protection Act, 68 of 2008* ("the Act"). So, what does this section say, and should agents be worried?

The relevant portions of section 54(1) provide that:

"When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to-

(a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;

(b) the performance of the services in a manner and quality that persons are generally entitled to expect;

(d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services"

It is important to take note of the fact that the Act refers to "consumers" and "suppliers". This is because the Act entails to protect "consumers" from "suppliers". This much is clear from the Act's name. Rental agents are suppliers in that they provide a service to landlords by finding suitable tenants and, in some cases, managing a lease agreement on behalf of the landlord.

Therefore, when a landlord approaches an agency for assistance in finding a tenant, and to manage a lease agreement, the landlord is entitled to a timely performance in a manner and quality that persons are generally entitled to expect from rental agents. The agent should, therefor, ensure that the collection of rental and payment of municipal accounts, amongst others, happen timeously. The agent should also timely inform the landlord of any unavoidable delay. For example, where the tenant will be unable to pay rent because of a retrenchment, etc.

Further to this, the landlord is also entitled to receive the property in the same condition as it was at the commencement of the lease. It is important to note that this right is enforceable against the rental agent. This highlights the importance of a deposit, as well as the need for a properly drafted lease agreement. Agents should ensure that they collect, and invest, a deposit, so that the deposit may be used to maintain the property.

Agents should also take heed of the provisions of the Rental Housing Act, 50 of 1999, which provides the framework for when a deposit may be used to repair a property, and which procedures should be followed. Landlords will not be acting unreasonable if they expect rental agents to have a thorough knowledge on the Rental Housing Act. Consequently, agents will risk being dragged to court by an aggravated landlord if the agent did not follow proper procedure when managing a lease.

What orders can be made against an agent who did not comply with the above-mentioned standards?

Section 54(2) of the Act provides that the consumer (landlord) may require the supplier to either

"(a) remedy any defect in the quality of the services performed or goods supplied; or

(b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure."

The wording of this section is straight forward. In layman's terms, agents will be ordered to either comply with the relevant standard, or to repay a part of their commission to the landlord. Principals of estate agencies should be aware that this claim can also be instituted against them as principals. Section 113 of the Act provides that:

"If an employee or agent of a person is liable in terms of this Act for anything done or omitted in the course of that person's employment or activities on behalf of their principal, the employer or principal is jointly and severally liable with that person."

In conclusion, rental agents should take their responsibilities seriously, as it is taken seriously by the law. In the past, suppliers could perhaps have been a little more relaxed as consumers were not informed about their rights. But, as information is more readily available on the internet, everyone seems to become a “specialist”. Rental agents might very well find themselves coughing up commission, received by them years ago.

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