

**RENT CONTROL: A COMPARATIVE ANALYSIS****S Maass\*****SUMMARY**

Recent case law shows that vulnerable, previously disadvantaged private sector tenants are currently facing eviction orders – and consequential homelessness – on the basis that their leases have expired. In terms of the case law it is evident that once their leases have expired, these households do not have access to alternative accommodation. In terms of the *Constitution*, this group of marginalised tenants have a constitutional right of access to adequate housing and a right to occupy land with legally secure tenure. The purpose of this article is to critically analyse a number of legislative interventions, and specifically rent control, that were imposed in various jurisdictions in order to provide strengthened tenure protection for tenants. The rationale for this analysis is to determine whether the current South African landlord-tenant regime is able to provide adequate tenure protection for vulnerable tenants and therefore in the process of transforming in line with the *Constitution*. The legal construction of rent control was adopted in pre-1994 South Africa, England and New York City to provide substantive tenure protection for tenants during housing shortages. These statutory interventions in the different private rental markets were justified on the basis that there was a general need to protect tenants against exploitation by landlords. However, the justification for the persistent imposition of rent control in New York City is different since it protects a minority group of financially weak tenants against homelessness. The English landlord-tenant regime highlights the importance of a well-structured social sector that can provide secure, long-term housing options for low-income households who are struggling to access the private rental sector. Additionally, the English rental housing framework shows that if the social sector is functioning as a "safety net" for low-income households, the private sector would be able to uphold deregulation. In light of these comparisons and the fact that the South African social sector is not functioning optimally yet, the question is whether the South African private sector is able to provide the required

---

\* Sue-Mari Maass. BComm (Law) LLB LLD (US). Senior lecturer, Department of Public, Constitutional and International Law, UNISA (maasss@unisa.ac.za). Thanks to Professor AJ van der Walt and Dr M Du Bois for reading and commenting on this piece. Their help is always greatly appreciated.

level of tenure protection for struggling tenants. Recent case law shows that tenants are at liberty to lodge unfair practice complaints with the Rental Housing Tribunals on the basis that the landlords' ground for termination of the lease constitutes an unfair practice. The Court defined an unfair practice as a practice that unreasonably prejudices the tenants' rights *or interests*. This judicial development signifies some transformation in the private sector since it allows the Tribunals to scrutinise landlords' reasons for termination of tenancies in light of tenants' personal and socio-economic circumstances. The Tribunals are therefore empowered to weigh the interests of both parties and decide whether to confirm termination of the lease or set aside such termination. In light of this recent development, the Tribunals can provide strengthened tenure protection for destitute tenants on a case by case basis, which incorporates a flexible context-sensitive approach to the provision of secure housing rights in the landlord-tenant framework. This methodology is similar to the German approach. Even though this judicial development is welcomed, it raises some concerns with regard to landlords' property rights and specifically landlords' constitutional property rights since Tribunals are now at liberty to set aside contractually agreed grounds for termination of leases without any statutory guidance. The legislation fails to provide any information regarding legitimate grounds for termination, which might have to be rectified in future. The grounds listed in the rent control legislation should serve as a starting point to determine which grounds for termination of a lease should generally be upheld. However, German landlord-tenant law shows that a statutory ground for termination of a lease should not be imposed in an absolutist fashion but rather place a heavier burden on the tenant to prove why the lease should not come to an end.

**KEYWORDS:** *Constitution*; landlord-tenant law; rent control; rent regulation; development of the common law; comparative law; housing law; statutory interpretation