

# **ANNUAL REPORT**



**Wes-Kaapse Huurbeusingtribunaal  
Icandelo Lentshona Koloni Lezindlu Eziqashweyo Ukuzinzisa  
ingxoxo- mpikiswano  
The Western Cape Rental Housing Tribunal**

**1 APRIL 2003 TO 31 MARCH 2004**

# ANNUAL REPORT 1 APRIL 2003 TO 31 MARCH 2004

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## **FOREWORD BY CHAIRPERSON**

As Chairperson, and as a collective, we have pleasure in submitting this third annual report, covering the period 01 April 2003 to 31 March 2004, to the Provincial Minister of Local Government and Housing.

The Western Cape Rental Housing Tribunal was established in terms of the Rental Housing Act, 1999 (Act No 50 of 1999), promulgated in August 2000. The Tribunal members were appointed in June 2001 and are currently in their third year of appointment. The Act prescribes that the Tribunal should consist of persons having expertise and exposure to rental housing matters, property management, housing development matters and consumer matters. The present Tribunal members bring with them rich experience in the fields of law, rental housing, property management, property development and consumer matters.

We do not believe in lengthy forewords as an annual report should speak for itself and to this end we can only pass reflections and observations glimpsed from the unfolding of cases during the past year.

There are two main observations. The first is that there is an increasing amount of complaints which, curious as it may sound, is a positive indicator that the message of delivery to the public has been and is now being seen by the public as taking effect. It is also positive in the sense that more and more members are being empowered in terms of being advised and being able to exercise the rights and responsibilities granted by the Government. There is also effectively been a growing embryo of knowledge in experience and lessons from which Government can tap into once the new national goals of increasing rental stock takes effect, both to guide the process and the different factors that should come into play to create harmonious landlord and tenant relationships. There has been a marked increase in rentals not only in previously rent controlled properties but generally as the boom in the property market, shortage of land for development and general difficulty to find suitable accommodation where demand for rental far exceeds available supply, unrealistic expected returns on property investments as the property prices increase and other factors tends to put upward pressure on rental amounts.

Much of the Tribunal's work has been generated by word of mouth rather than a concerted effort. As a Tribunal we think that the lack of marketing may in part be due to the realization that the under-resourcing and capacity problems highlighted in earlier annual reports have not been addressed yet and the fact that an increase in complaints as shown in the attached report will more than likely effectively overload the system in that the support staff will not be able to cope. A direct effect of this under resourced and capacity problem is that that there is a backlog being created which will have to be addressed before the situation becomes unsalvageable. A side effect of this problem is that the Tribunal has only heard cases in the Metro and until we start showing a presence in terms of reaching areas other than the Metro region, many problems may never reach the Tribunal. We are pleased that the new Minister has been alerted to the problem and has given a commitment to finding solutions to anything that may impede service delivery.

On a more positive note it would appear that the Tribunal and its staff have thus far managed to strike a "win-win" balance in most cases whereby both landlord, estate agents and tenants have walked away having learnt something and/or have a better understanding of what is expected from each party to create the foundations for harmonious relationships.

Further due to extraordinary efforts by the Support Component to resolve disputes by means other than formal hearings, the Tribunal can look back on a year that surpassed the achievements of the previous year. We would like to thank our fellow members for the way in which each contributed in their own way towards building a strong team. We also especially want to thank the Support Staff for their efforts and dilligence throughout the year and the way in which they contributed towards making the Tribunal the success that it is.

**Mr S Patel**  
**Chairperson**

**31 July 2004**

## **PART ONE: GENERAL INFORMATION**

### **1.1 Introduction**

The rental housing field has to date been an area where a lot of disputes arose from ignorance, as well as unlawful and even illegal actions of landlords and tenants. Until the promulgation of the Rental Housing Act, 1999 (Act No 50 of 1999) on 01 August 2000, there was no other legal mechanism to deal with disputes, other than through costly civil litigation. The Rental Housing Act now provides general principles governing conflict resolution in the rental housing sector and also provides for the facilitation of sound relations between landlords and tenants through general requirements relating to leases laid down in the Act. This sets the backdrop against which the Tribunal must function.

The Tribunal is established in terms of section 7 of Act 50 of 1999 and consists of members appointed by the Provincial Minister of Housing. It has no infrastructure, no budget, is not responsible for any expenditure and it therefore has no financial statements. The activities of the Tribunal are funded from moneys appropriated by the Provincial Legislature and the Head of the Department of Housing is the Accounting Officer in respect of moneys appropriated.

### **1.2 Mission statement**

The Western Cape Rental Housing Tribunal seeks to harmonise relationships between landlords and tenants in the rental housing sector.

### **1.3 Legislative framework**

The following legislation provide fundamental principles and guidelines upon which the Tribunal operates:

- The Constitution of the republic of South Africa, 1996 (Act No 108 of 1996);

- The Rental Housing Act, 1999 (Act No 50 of 1999);
- The Unfair Practice Regulations and the Procedural and Staff Duties Regulations published in terms of Act 50 of 1999;
- The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No 19 of 1998).

The functions of the Tribunal are to harmonise relationships between landlords and tenants in the rental housing sector; resolve disputes and unfair practices; inform landlords and tenants about their rights and obligations in terms of the Act; and to make recommendations to relevant stakeholders pertaining to issues related to the rental housing sector.

## **PART TWO: HUMAN RESOURCE MANAGEMENT**

### **2.1 Personnel arrangements**

The Tribunal does not have personnel within its employ. The administrative and technical support functions are performed by the Department of Housing that provides a Support Component in terms of section 11 of Act 50 of 1999. The personnel are appointed subject to the laws governing the Public Service.

### **2.2 Personnel costs and related information**

The members of the Tribunal are:

<u>Name</u>	<u>Capacity</u>
Mr JS Patel	Chairperson
Ms M Wotini	Deputy Chairperson
Mr P le Roux	Member
Mr M Mdludlu	Member
Ms T van der Hoven	Member
Ms S Ndlwana	Alternate member
Ms V Marks	Alternate member

The members of the Western Cape Rental Housing Tribunal remained the same for the reporting period. The Minister of Housing decided to reappoint the deputy chairperson and the three members whose contracts would have expired at the end of May 2004, in the interest of service delivery and to ensure continuity. All accepted their reappointments and the Tribunal would like to express their appreciation to the Minister for the faith placed in them. This would contribute greatly to the effectiveness of the Tribunal, especially given the increasingly important role that rental housing will play in housing the people of the Western Cape.

## Expenditure

Expenditure in respect of the remuneration of Tribunal members for the financial year is as follows:

2003/2004

R 216 391.78

<b>Tribunal members</b>	<b>Hearings/Meetings</b>
Mr S Patel	31 580.97
Ms M Wotini	20 389.78
Mr P le Roux	47 384.25
Ms T van der Hoven	40 062.85
Mr M Mdludlu	16 407.17
Ms V Marks	6 147.09
Ms S Ndlwana	54 419.67
Total:	216 391.78

## **PART THREE: PERFORMANCE OF THE TRIBUNAL**

### **3.1 Key objectives**

The key objectives of the Tribunal for the period under review, were as follows:

- To promote stability in the rental housing sector;
- To provide mechanisms to deal with disputes in this sector;
- To promote the provision of rental housing property;
- To facilitate, investigate, mediate and conduct hearings to resolve disputes between landlords and tenants;
- To inform landlords and tenants of their rights and obligations should unfair practices arise; and
- To make recommendations to relevant stakeholders regarding issues to be addressed in the rental housing field.

### **3.2 Review of activities**

#### **3.2.1 Problems identified in Annual reports for 2001/2002 and 2002/03**

In the previous annual reports, the Tribunal noted various problem areas and made certain recommendations. Most of the issues have since been addressed, but due to a variety of reasons, it has to be reported that some problem areas still remain. To provide context, it is necessary to again refer to issues in the previous reports and then to report on progress/lack of progress:

- *“The Tribunal has not had the opportunity to interact with Tribunals of the other provinces and it is therefore not possible to resolve problems around the Act in a uniform manner. The Tribunal will endeavour to liaise with the other Tribunals in this regard.”*

To date, only the Western Cape, Gauteng and KwaZulu-Natal Tribunals are operational. The other provinces are in various stages of implementation, but

informal contact has shown that no meaningful liaison will be possible, as they will not have dealt with any cases yet. Due to indications by the National Department of Housing that Act 50 of 1999 is in the process of being amended, the Tribunal has decided to rather wait for the proposals to be distributed first, before consulting with the other Tribunals on possible co-ordination of inputs.

Comments in this regard were also included in proposals submitted to National Housing regarding the amendment of Act 50 of 1999.

The Tribunal is now in the process of setting up visits to the Gauteng and KwaZulu-Natal Tribunals with a view to sharing best-practises and to evaluate own performance.

- *“The enforcement of Tribunal rulings were hampered as the South African Police Service and the Public Prosecutors who were approached for specific cases, were not aware of the Rental Housing Act, 1999.”*

Much progress has been made in this regard, due to concerted efforts to inform and educate the SAPS and Magistrate’s Courts of Act 50 of 1999, as well as the existence and functioning of the Tribunal. Discussions were held with senior magistrates and senior prosecutors regarding a work protocol. In terms of this, the Tribunal has now referred seven cases of non-compliance with rulings and failure to attend hearings for prosecution.

Comments in this regard were also included in proposals submitted to National Housing regarding the amendment of Act 50 of 1999.

- *“In terms of Section 5(3)(d) of the Act, the interest on a deposit must be dealt with in accordance with the Estate Agency Affairs Act, 1976 and thus should be paid over to the Estate Agents Board. The Tribunal recommends that the interest should be refunded to the tenant, even when the landlord is, or has appointed an estate agent”.*

This problem has now been sorted out and agreement reached with organised bodies representing estate agents. Those not affiliated and still committing unfair practices, are dealt with on the basis of convincing them to comply, or to resolve disputes through formal hearings.

Comments in this regard were also included in proposals submitted to National Housing regarding the amendment of Act 50 of 1999.

- *“In terms of Section 5(3)(a) a landlord must issue written receipts to the tenant for all payments. The Act is very specific in terms of Section 5(3)(b) on what detail should be on the receipts. Landlords have indicated that these specifications are not always possible (where supermarkets are used as collection points) and are also costly for the landlord, which impacts financially on tenants.”*

Comments in this regard were also included in proposals submitted to National Housing regarding the amendment of Act 50 of 1999.

- *“The Act compels the landlord to do joint inspections with tenants before they move in and out of a dwelling (Sections 5(3)(e) and 5(3)(f)). The Tribunal is of the opinion that the Act places an obligation on both parties to be part of the inspections and that the costs can therefore not be attributed to the tenant. The Tribunal therefore questions the tendency of landlords/agents to charge the tenant extra for this action.”*

Legal opinion obtained in this regard showed that the Tribunal would not be able to interfere in this regard by regulating the matter. Comments in this regard were therefore also included in proposals submitted to National Housing regarding the amendment of Act 50 of 1999.

- *“Section 19 provides for the saving of only Section 28 of the Rent Control Act, 1976 (after the repeal of the rest of the Rent Control Act, and the abolishment of the Rent Board). The implications of this are:*
  - *The Tribunal does not have any jurisdiction to deal with*

- exemptions, or new determinations where previous determinations are obviously outdated.
- The Tribunal cannot order increases in rental which will enable landlords to effect much-needed maintenance on rent controlled properties.
  - The National Minister of Housing will have to provide direction on how to further deal with rent controlled properties before August 2003 when the saving regarding rent control is repealed. The Western Cape will especially be affected by this, as there are approximately 3 000 such properties that will be affected. The situation will be that, should rent control be retained, landlords will be penalised by not being able to increase rental by more than 10 % and will therefore not be able to afford maintenance, which in turn could lead to a decrease in the value of properties. On the other hand, should rent control be abolished, thousands of tenants will lose their homes due to high rental increments, which will flood the Tribunal with complaints regarding excessive increases in rental, leading to a situation where the Tribunal will have to determine what the rentals should be, with no guidelines to use.

*To accommodate both these scenarios, Section 19(3) of the Rental Housing Act could be used, where the Minister may define criteria based on age, income or any other form or degree of vulnerability that apply to such tenant or group of tenants and amend or augment the policy framework on rental housing, by introducing a special national housing programme to cater for the needs of affected tenants that comply with the criteria. It is imperative that this issue be clarified before the August 2003 deadline, to provide consistency of rulings by all Tribunals”.*

During the reporting period, the Tribunal did voice its concerns in writing around the repeal of rent protection and rent control, via the MEC for Housing to the National Minister of Housing. However, the Tribunal now has to report

that it would appear, that although the saving was repealed on 01 August 2003 after a three year period to comply with section 19(2) of Act 50 of 1999, no specific steps were in fact taken. In terms of this, the impact of the repeal of the saving on poor and vulnerable tenants should have been monitored and assessed. It would therefore also appear that no specific action will therefore be taken to alleviate hardship that may be suffered by affected tenants.

It was reported in the previous annual report that the Western Cape has a large number of rental stock that fall within the scope of this saving and that a large number of complaints would be anticipated after the repeal of the saving. It can be reported that, although there was an initial increase in complaints of rentals jumping to market related levels, it later transpired that landlords merely gave the affected tenants notices to vacate, rather than facing complaints of exploitative increases. This meant that a lot of old and fragile tenants were gradually “forced” out of accommodation that they had been renting for years. It also means that they now have to pay market related rentals elsewhere.

The Tribunal can also report that it has dealt with complaints regarding exploitative rental increases, through formal hearings, where rental determinations were done. These determinations were not merely market related rentals, but reflect a variety of issues related to the specific landlord, tenant and the property in question that are taken into account when a determination is done.

### **3.2.2 Staffing**

The Chief Directorate Organisational Development has undertaken two investigations into the staffing needs of the Support Component. The last report was finalised in 2002 and recommended two additional posts. However, the implementation has to date been held back, pending the completion and acceptance of the macro-investigation of the whole Department. The Tribunal wants to express its concern that the Support

Component has now for three consecutive reporting periods been understaffed and will still be for the foreseeable future. This is now really starting to impact on service delivery and the danger exists that, given the increasing focus on the importance of rental housing by Government, the Tribunal can be rendered inoperative in the near future. The Department will have to now view the adequate staffing of the Support Component in a more serious light, as it could well happen that the integrity of Tribunal will be compromised due to complaints not being dealt with within the prescribed 90 days period. This could lead to cases being taken on review due to non-compliance to the legislative prescripts.

The staff shortage still has a negative ripple effect resulting in a lack of capacity to investigate cases, to prepare documentation for hearings, to provide the necessary support to the members and to effectively embark on an awareness campaign.

The Tribunal would like to recommend that the filling of the newly approved vacant posts at the Support Component be afforded a high priority when the new Departmental structure is implemented, while at the same time reinvestigating the staffing needs due to increases in complaints and the higher priority accorded to rental housing.

### **3.2.3 Raising awareness of Tribunal activities**

Raising awareness regarding the Tribunal is the responsibility of the Department of Housing. The Support Component has on three occasions introduced the Tribunal to the rural areas as part of the Provincial MEC for Housing's "roadshows". There has also been publicity provided on talk shows on radio stations and quite a few articles regarding specific cases and contentious issues appeared in newspapers. In addition to this, there is close co-operation with the Institute of Estate Agents regarding an awareness about the Tribunal with its members who act as renting agents. This focused attention has lead to various invitations to be part of panel discussions at Annual General Meetings and other opportunities like training workshops.

The Support Component has also started to educate and inform members of the SA Police Service serving in Community Centers and Clerks of the Civil Courts at various Magistrate's Offices, who now refer complaints to the Tribunal. Discussions have also been held with housing managers at the Unicity to possibly cooperate with the marketing of the Tribunal through their housing offices and their Call Center operators.

The Tribunal also features prominently on the Departmental Website and a trend is already seen where queries are received via the Internet. On the Website, direct access is provided to the Rental Housing Act, the Regulations published in terms of the Act, the Complaint Form, and Information Brochures in Afrikaans, English and Xhosa. As the Tribunal is currently the only one in the RSA to be linked to a Website, queries are also received via this medium from affected parties in other provinces.

At the time of completing this report, Rental Housing Information Offices still had not been implemented at the various municipalities. However, discussions with various municipal housing officials have indicated that a dedicated and fully staffed Rental Housing Information Office will in all probability not be implementable at all municipalities, due to practical reasons. The Tribunal has taken note that it could be a more practical solution to capacitate frontline staff at municipalities to refer cases to the Tribunal, as it could be problematic with inexperienced staff getting involved in cases or providing advice to disputing parties, while not being part of the Tribunal.

#### **3.2.4 Infrastructure**

A separate venue, with furniture, for the Tribunal to hold meetings has been provided. However, it is too small for formal hearings and formal hearings therefore have to be held in conference rooms in the building, which are not always really suited for the specific needs of the Tribunal in terms of layout needed during a hearing. The Tribunal has now noted that the Department is in the process of accommodation planning, which will include a larger and

more suitable venue for the Tribunal's exclusive use in the immediate area of the Support Component. This would greatly assist in saving time during hearings, as time is wasted with parties having to move up-and-down in the building, as the conference rooms do not provide for waiting rooms to use when the Tribunal is in recess prior to a ruling, or where witnesses can wait during hearings.

Hearings outside of Cape Town are held as close as possible to the point of complaint and the Tribunal is therefore dependent on the infrastructure provided by the local authorities.

### **3.2.5 Amendments to the Rental Housing Act, 1999 (Act No 50 of 1999)**

During the reporting period, the National Department of Housing requested inputs from all Tribunals regarding possible problems with Act 50 of 1999, which would be included in a possible Rental Housing Amendment Bill. The Tribunal is, however, disturbed that a very short period for inputs was provided and in-depth discussions with other role players and even other Tribunals could therefore not take place. The Tribunal, did, however, submit comprehensive inputs as discussions around this have been taking place since its inception.

### **3.2.6 Best practice visits to other Tribunals**

The Tribunal is of the opinion that visits to other Tribunals would be beneficial to determining where improvements can increase effectiveness as well as support investigations into capacity problems in the Support Component. The Tribunal hopes that this will materialize in the near future.

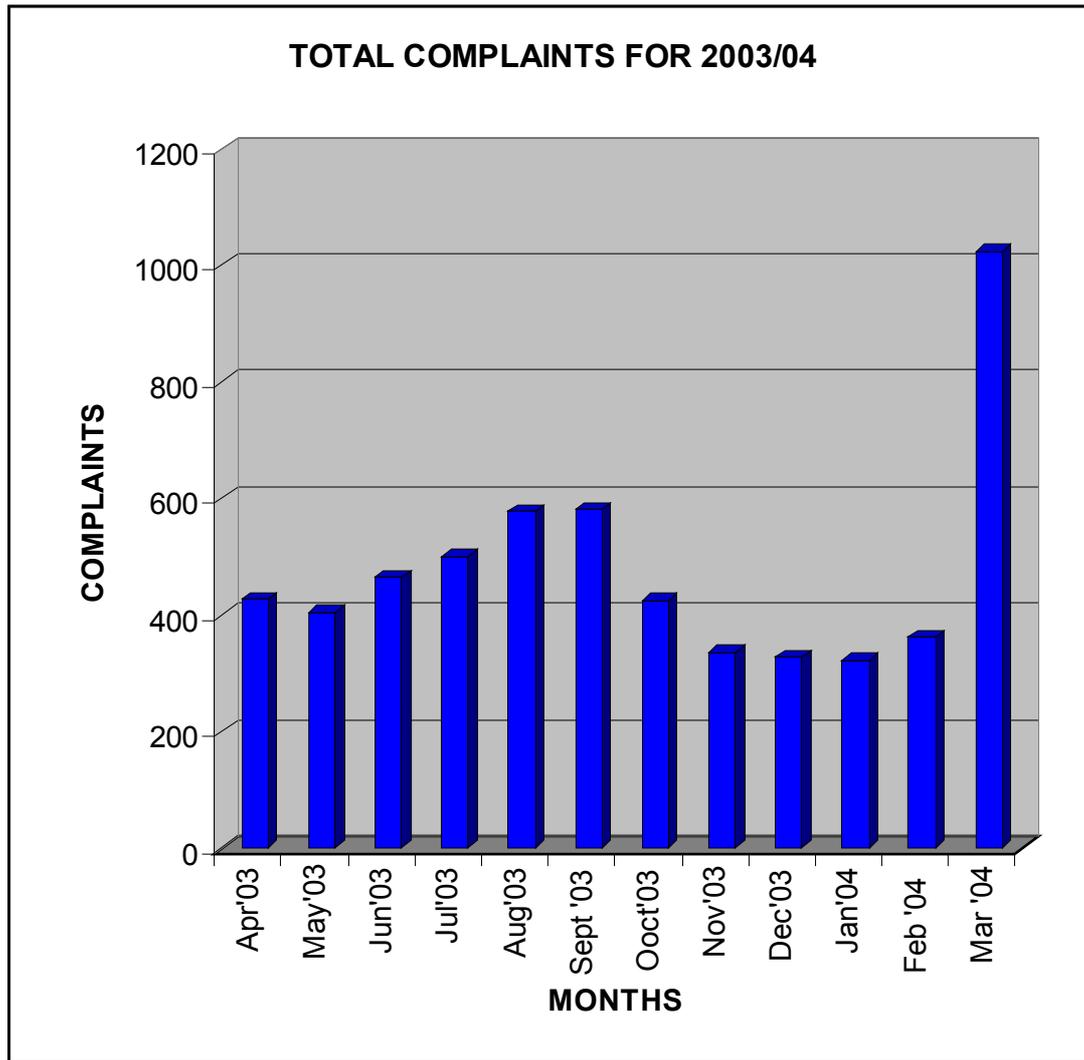
## **PART FOUR: STATUS/STATISTICS OF COMPLAINTS**

### **4.1 Status of complaints**

The following can be reported on an analysis of the complaints received thus far:

- Most of the complaints received by the Tribunal originated from the Cape Metropolitan Area and is more evenly distributed on a geographical basis, than the previous year. However, there are still problems experienced around awareness creation in certain communities. Plans put in place for the coming year will hopefully address this. There was, however, a marked increase in complaints and enquiries from outside of the Metropolitan Area.
- Most of the complaints have been resolved by the support staff through negotiations, of which most were dealt with telephonically.
- Tribunal members have not been made involved in negotiations, to avoid possible perceptions of biasness, should the cases be referred for hearings.
- Forty two hearings were conducted in the report period, of which five were found in favour of the landlords/agents and thirty one in favour of the tenants.
- None of the rulings made after formal hearings have to date been referred for review.
- Seven cases of non-compliance to rulings, or non-attendance of hearings were referred for prosecution.
- The Support Component submits monthly reports on the status of cases to the National Department of Housing.

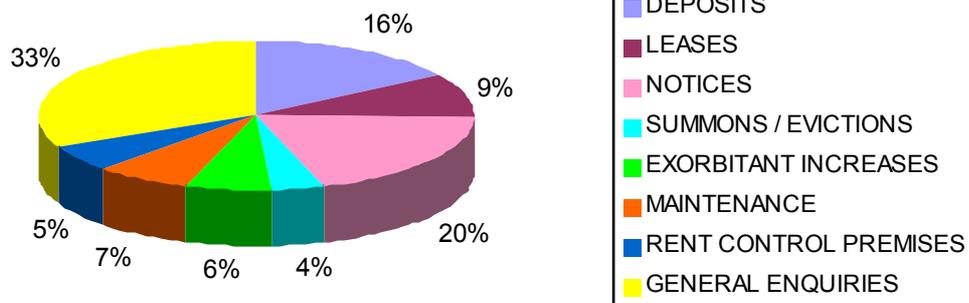
#### 4.2 Statistics of complaints



TOTAL COMPLAINTS RECEIVED FOR 2003/04												
APR	MAY	JUN	JUL	AUG	SEP	OC T	NOV	DEC	JAN	FEB	MAR	TOT
427	405	465	500	578	581	425	336	327	322	362	1024	5752

A total of 5 752 complaints were received in 2003/04, compared to the 4 058 in 2002/03 and 2 457 in 2001/02. This entailed a 46% increase to 2002/03 and a 30% increase to 2003/04, being dealt with by the same number of staff.

## TYPES OF COMPLAINTS 2003/2004



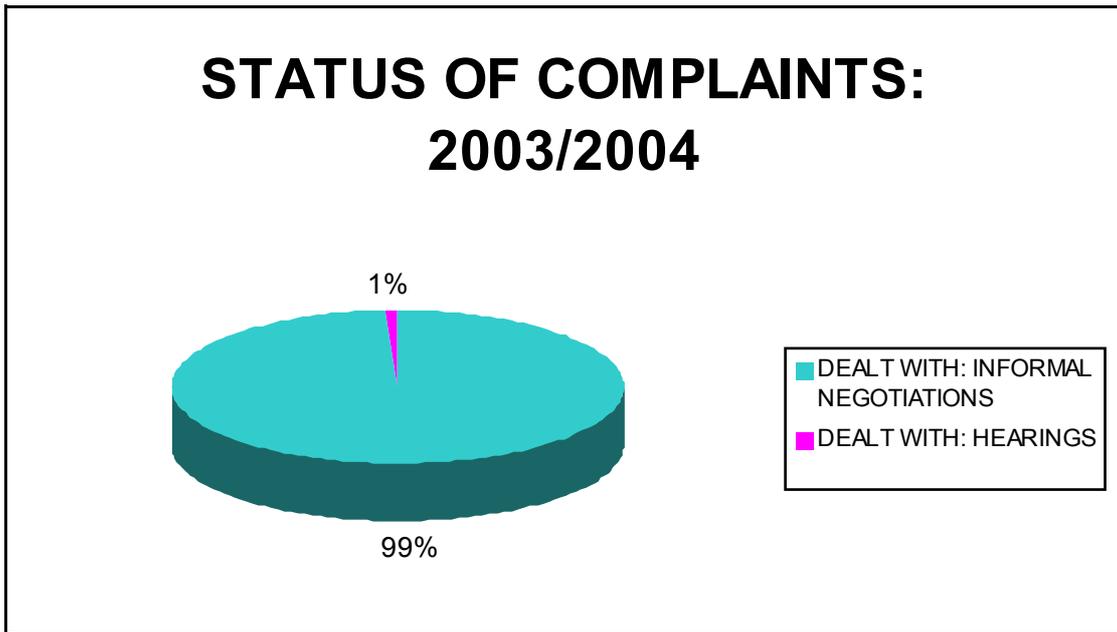
The 5 752 complaints received for 2003/04, can be categorized as follows:

- 913 regarding deposits not refunded
- 544 regarding lease agreements not being adhered to
- 1142 regarding unlawful notices
- 228 regarding illegal evictions
- 359 regarding exorbitant increases in rental
- 424 regarding failure to do maintenance
- 309 regarding rent controlled properties
- 1842 regarding general enquiries

Trends from 2002/03 to 2003/04 are:

- Deposits – increase of 33% from 615 to 913
- Leases – increase of 29% from 390 to 544
- Notices – increase of 43% from 654 to 1142
- Evictions – increase of 6% from 214 to 228
- Increases – increase of 40% from 215 to 359
- Maintenance – increase of 3% from 412 to 424
- Rent control – decrease of 12% from 352 to 309

- General enquiries – increase of 35% from 1205 to 1842

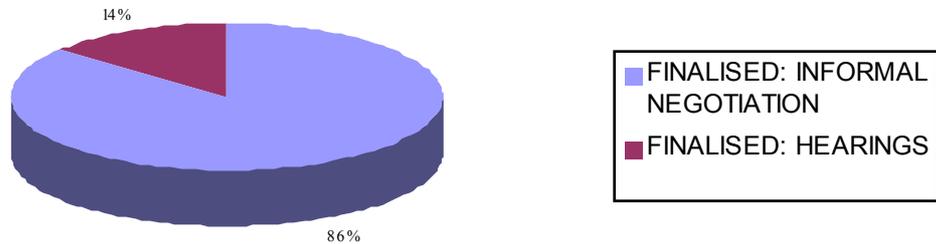


Of the 5 752 complaints received, only 42 were dealt with through formal hearings. This means that the Support Staff resolved 5 710 (more than 99%) of cases.

A comparison with previous years shows the following:

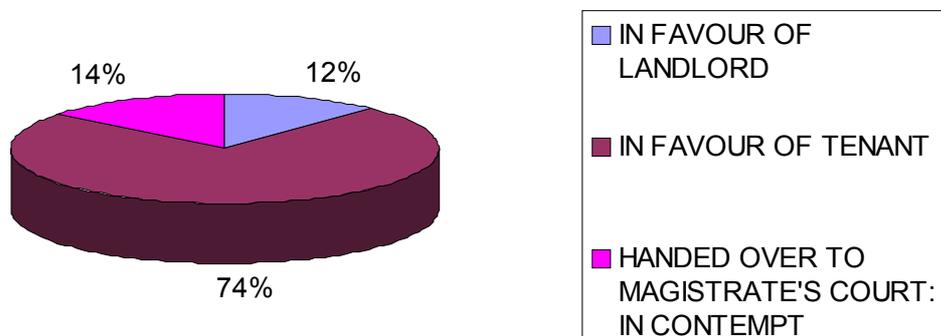
- Complaints received:  
2001/02 – 2 199; 2002/03 – 4 058 (46% increase); 2003/04 – 5 752 (30% increase).
- Complaints dealt with through Hearings:  
2001/02 - 14 (0,64%); 2002/03 - 26 (0,64%); 2003/04 - 42 (0,24%)
- Average complaints received per month:  
2001/02 – 183; 2002/03 – 338; 2003/04 - 479.
- Cases resolved by the same number of support staff:  
2001/02 – 2 185; 2002/03 – 4 032; 2003/04 – 5 710

## STATUS OF FORMAL CASE FILES: 2003/2004



Formal case files were opened for 296 of the 5 752 complaints received. Of these, the staff dealt with 254 cases, as only 42 were dealt with through formal hearings.

## STATUS OF RULINGS AFTER HEARINGS



Of the 42 hearings, 31 rulings were in favour of tenants and 5 in favour of landlords. Six cases were handed over to Magistrate's courts for prosecution.