

# **The Landlord's Right to Consumer Protection**

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In this article, the authors discuss how the meaning of the term “consumer” can influence the controversial legal ramifications of the use of this term in the particular situation of the South African rental housing market. Semantic knowledge may provide understanding of a term like “consumer” that is embedded in a specific law such as the South African Consumer Protection Act 68 of 2008. The interpretation of a term can enter the realm of specialist knowledge, like that of particular legal domains for example. However, the legal meaning of “consumer” has connotations in a South African context that differs from its general denotative legal meaning. Thus, the authors contend that the general legal meaning should be scrutinized with a view to enriching the legal meaning of the term as it is particularly interpreted in a South African context. This analysis may benefit landlords, whose rights as consumers are currently not acknowledged in the context of the South African rental housing market. In fact, in the context of the South African Rental Housing Act 50 of 1999, only the tenant is viewed as a consumer. An analysis of meaning of the term may reveal that the landlord may also be defined as a consumer.

*Keywords:* legal semantics, landlord and tenant, consumer, economic good, protection

## **1 Introduction**

The semantic interpretation of the term “consumer” in South African rental housing legislation is currently only applied to tenants, as opposed to landlords. In the context of the South African rental housing

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market, landlords need to be considered as consumers in order to be afforded legal protection. Consumer protection legislation for the rental housing market is provided by the South African Rental Housing Act 50 of 1999 (the RHA). However, the RHA has only so far identified the tenant as a consumer owing to conditions in the rental housing market at the time of promulgation, when the tenant was identified as the weaker bargaining position in the landlord-tenant bargaining relationship. Therefore, although the South African Consumer Protection Act of 2008 (“the CPA”) safeguards consumer rights, it is only the tenant who is protected. The authors contend that the landlord needs to be also identified and protected as a consumer. An analysis of the meaning of the term may lead to the classification of the landlord as a consumer and thus, establish his or her right to protection.

In the current rental housing market situation in South Africa there is an oversupply of rental housing stock. Therefore, there is an unequal bargaining relationship between landlord and tenant in favour of the latter. Thus, the landlord now needs protection as the tenant did in the past, and this could be done paradoxically as it was for the tenant, by categorizing the landlord as a consumer.

The advantage for landlords in being classified consumers is that they would be entitled to legal protection. In order for landlords be classified as consumers by the same criteria as tenants were classified, understanding of the concept needs to be explored to prove that landlords should be perceived as consumers as tenants have always been.

In this article, the authors will analyse the term “consumer” to establish whether the criteria currently applied to tenants as consumers can be also be valid in the classification of landlords as consumers in the context of the South African residential rental housing market.

## **2 Legal interpretation of the term “consumer”**

Bloomer, Griffiths and Merrison (2010) state that the understanding of a legal term such as “consumer” belongs in the realm of specialist and encyclopaedic knowledge. Cartwright (2001) supports this notion, but adds that there is no internationally recognized legal definition of the word “consumer” and its meaning and significance varies. However,

the specialised legal meaning of the term “consumer” as defined in the Merriam-Webster’s *Dictionary of Law* (2011) is “one who utilises economic goods”. In other words in legal terms, a consumer is basically an individual who buys hires or uses goods or services (McQuoid, 1997).

A definition of the term “consumer” can also be found in relevant South African legislation. The repealed Consumer Affairs (Unfair Business Practices) Act 71 of 1988 defined a consumer as “any natural person to whom any commodity is offered, supplied or made available” (*Consumer Affairs*, 1988). The CPA (Act 68, 2008) the latest South African legislation on this topic, contains essentially the same definition as that of the Merriam-Webster’s *Dictionary of Law* (2011). The former states: “that a consumer is a person to whom goods or services are advertised, offered, supplied, performed or delivered in the ordinary course of business”. The definition of the term “goods” in the Consumer Affairs (Unfair Business Practices) Act 1998 is broad and covers all movable and immovable, corporeal and incorporeal property, including any service (*Consumer Affairs*, 1988). The definition of “goods” in the Consumer Protection Act is similar in that it covers all types of goods and services offered in the ordinary course of business (Act 68, 2008). Thus both Acts view the consumer as a user of facilities and property including personal property.

The legal definitions explained above generally interpret the term “consumer” as a user of goods involving business transactions. The consumer is thus, a user of economic goods, a term that will be thoroughly investigated later in this article as part of the analysis of the term “consumer”. The authors maintain that the definition of a consumer as a user of economic goods could be applied to landlords as well as tenants, as both make use of rented or leased property such as an apartment or house in different ways. However, in the context of the South African residential housing market as well as the RHA, the above legal meaning of the term “consumer” as one who utilizes economic goods is generally applied only to the tenant who makes use of a landlord’s property. In other words, the denotative (explicit and literal) legal meaning has taken on a connotative meaning (associations and overtones).

The term should denote as well as connote the notion of the landlord as a consumer who also utilizes economic goods. Foreign, but highly relevant here, the Indian Consumer Protection Act 68 of 1986 clearly differentiates a consumer as consuming a commodity or service either for his personal domestic use or to earn his livelihood. This particular legal interpretation clearly points to the landlord who uses his property for financial gain and is like the tenant, a user of economic goods

According to Levy, Bayley and Squire (2004), semantic knowledge is long-established knowledge about objects, facts and word meanings. This knowledge can be found beyond legal spheres, particularly the South African rental housing legislative sphere. Thus, an exploration of the semantic interpretation of “consumer” will provide the first steps to a deeper understanding of the concept (Grundy, 1987).

United States President John F Kennedy made general use of the term “consumer” during a declaration to the US Congress in 1962. According to Kennedy (1962), the word “consumer” could actually “include us all”. Kennedy added that consumers make up “the largest economic group, affecting and affected by almost every public and private economic decision” (Kennedy, 1962).

In light of Kennedy’s interpretation, the term “consumer” generally delineates any individual who could be labelled as a user of goods and services generated within the economy (Oxford, 1984). Thus, the legal meaning of the term is general and should include the landlord, who is not regarded as a consumer in the context of the South African rental housing market.

The tenant as a consumer does indeed make use of a landlord’s property that is rented for a price. However, the landlord makes use of the same property to generate an income. Both parties “utilize economic goods”, which is in fact both the denotative legal and general meaning that goes beyond the narrow connotative tenant-oriented sense that is implied in the South African rental housing market.

In fact, one could maintain that the landlord is more a consumer than the tenant as the former may utilize the goods over a longer period with many tenants, whilst the latter utilizes the goods only for the duration of a specific lease period (Backman, 1980).

The landlord is a user of goods such as housing that generally can be obtained or exchanged for money in the form of rent. As Backman (1980) points out, the landlord is using his/her property over and over again to generate rental income. The landlord may be a supplier of goods for the use of the tenant but he/she is also a user of the same goods and therefore should be viewed as consumer.

Whatever the semantic interpretation of the definitions discussed, the authors propose that one clear criterion stands out in describing a consumer, and that is that the term delineates a user of economic goods. The term “economic goods”, however, needs to be thoroughly analysed and its constituent elements examined in order to truly understand the term “consumer” that signifies the user of these goods. An exploration and explanation of the term “economic goods” will provide more detail in understanding how both the landlord and tenant can be defined as a consumer and legally protected as such in the South African rental housing market.

### **3 Economic goods**

In an analysis of the concept “economic goods”, the following questions need to be answered: What in fact, is an economic good? When is a good not economic? And how does the use of economic goods delineate the circumstances pertaining to both the landlord and tenant as consumers as being in need of legal protection by means of the RHA.

The seventeenth century English philosopher John Locke (in Robbins, Medena, & Samuels, 2000) viewed an economic good as a “tangible item produced with society's limited resources for the purpose of satisfying wants and needs”. According to the eighteenth century English economist Sir James Stewart (1996, p. 343) adding the word “economic” before the word “good” signifies that “a good has limited availability relative to desired use and is exchanged through a market. Buyers pay a price to obtain the good and sellers give up the good in exchange for payment.” Moreover, the Nobel Prize winning American economist Paul Anthony Samuelson (in Marshall, 1920) links the notion of utility of goods to that of their limited availability or scarcity.

Thus, an economic good is more specifically a good with limited availability relative to desired usefulness. The two concepts utility and scarcity are thus closely related with respect to economic goods. Scarcity is the general problem underlying the study of economics and an economic good is a specific good that reflects this general scarcity of condition. According to Hayek (in Menger, 2007, p. 18), Menger was the first economic philosopher to distinguish between free and economic goods based on the idea of scarcity. The contrasting notion to an economic, or scarce, good is a free good. A free good is one that is plentiful enough to satisfy all desired uses, often with some left over.

An economic good, therefore, is one that involves the presence of cost in the sense of effort (Menger, 2007, p. 18). On the other hand a good that is not economic points to an absence of value or scarcity, although Menger himself did not use the term “scarcity” and instead used the German for “insufficient quantity” (Menger, 2007, p. 18)

Menger (2007, p. 48) elaborates on the notion of an economic good as being determined by conditions where “a thing is useful... (and) ... possesses value ... (according to) ...the measure of this value”. Thus according to Menger (2007, p. 48), a good will be economic “if there are conditions for an economic exchange of goods between two economizing individuals, and the limits within which a price can be established if an exchange does occur”. The circumstances surrounding the economic exchange will determine which economizing individual will be in a higher or lower bargaining position. However, both parties using the economic goods need legal protection by definite laws regarding the phenomena that condition the outcome of the economic activity of men and are entirely independent of the human will (Menger, 2007, p. 48).

Menger (2007, p. 104) refers to goods that have “economic character” for consumers who use them in an economic chain of events. Menger (2007, p. 237) writes of consumers who use goods that have value and are not free goods and then produce goods that in turn become economic goods consumed by yet another consumer. He gives the example of a cottage craftsman who is a consumer of an economic good such as the raw wool that he obtains from a farmer. But then, the cottage craftsman becomes a producer in his own right of another economic good which is the yarn that is in turn consumed by the

weaver who makes cloth who is thus, also a consumer and producer and so on. At the root of all these economic transactions lies the economic good that is continually consumed or produced.

In the example above, the consumer can thus be also perceived to be the producer, a notion that may be applied to the proposition of this article: that the landlord commonly viewed as a producer or supplier of economic goods can, in fact, be also perceived as a consumer who uses the economic goods of immovable property during the economic exchange between the landlord as consumer and tenant as consumer in the rental housing market.

#### **4 The landlord as a consumer**

As stated above, although it is implied in South African Law that a tenant is a consumer who uses economic goods, namely the rented property supplied by the landlord in exchange for rent, the landlord can also be perceived as an individual who utilizes economic goods – his own property to gain a livelihood.

Ritchie (1994) contends that the landlord is a consumer who buys (invests in) property to produce or generate an income. This is, in fact, just like the craftsman who purchases raw wool to make yarn as discussed by Menger (2007) referred to above. In other words, as the craftsman (the consumer/producer) sells the yarn to the weaver, so the landlord obtains rent according to the circumstances determining the value of his property as the economic good (Bradbook, 1998). Thus, a landlord is a consumer and user of an economic good in the shape of immovable property whilst in an economic relationship with the tenant who is also a consumer of the same property, the only difference being that the landlord also supplies the economic goods. The tenant has a right to be protected with regard to service delivery and maintenance of the property for which he/she is paying money. On the other hand, the landlord has a right to be protected with regard to income and reasonable upkeep of the economic goods that he/she lets to the tenant in the financial transaction. In fact, the landlord has even more need for protection because he also uses the economic goods, time and time again, namely the immovable property, for an income.

Friedman (1962) points out the need for legal protection for consumers as well as for producers or suppliers. Both are entitled to economic freedom that the law should provide for this. Both the landlord and the tenant as consumers are involved in financial transactions that focus on the use of particular immovable property and the landlord is also a supplier. They are both according to Friedman (1962), therefore, entitled to consumer legal protection, but this is not provided in current South African RHA that does, however, provide for the tenant's protection. Yet, as Menger (2007) points out, laws are the only ways of providing protection to parties involved in an economic exchange who are of equal rights if not equal bargaining power that in the case of landlords and tenants varies according to circumstances.

## **5 Consumer protection legislation and the landlord**

One of the aims of consumer protection legislation is to correct unequal bargaining relationships between a more powerful party and a less powerful consumer (*South African Draft Green Paper*, 2004). The tenant is usually considered to be the less powerful consumer. However, the authors argue that the landlord is today the less powerful consumer in the rental housing market. Therefore the consumer protection legislation should in fact protect the landlord against tenants who are not adhering to their side of the bargain between them and the landlord. The landlord, being a less powerful consumer, should have a right to legal protection.

According to the Western Cape Rental Housing Tribunal (2006) annual reports, unscrupulous tenants are on the increase. Complaints relating to rental arrears, failure to vacate the premises at the end of the lease and claims for damage to property, amongst others, are being lodged with the Tribunal in larger numbers each year since the commencement of the Tribunal. The landlord is, thus, becoming more and more a victim in the landlord/tenant relationship and the tenant by victimizing the landlord is changing the usual power relationship in favour of the tenant.

The basic reason for this reversal of power in the landlord/tenant relationship is to be found in the oversupply of rental stock. Since the inception of the RHA on 1 August 2000 the overall housing sector has

had a limited increase in the number of households living in rented accommodation, as more households are living in owned accommodation (Shisaka, 2004). The fact that there is a limited increase in the number of tenants is the result of the 2004/2005-property market boom. Shisaka (2004) maintains that the buy-to-let investment trend, which characterized the property boom, resulted in an oversupply of rental stock. This is a very different situation compared to the one that prevailed at the time when the RHA was enacted.

Although the buy-to-let market has slowed down somewhat during 2008 and 2009, the market is predicted to increase once the current slowdown has worked itself out during 2010 and beyond again triggering an oversupply of rental stock (Shisaka, 2004). D'Alton (2009) affirms that such an oversupply of rental stock causes an imbalance in the relationship between landlord and tenant in that the tenant is in a stronger bargaining position than the landlord, as the supply of stock is greater than the demand. Muller (2009) points out that tenants are shopping around for better rentals and contract terms before renewing or entering into a lease. Thus, landlords are forced to reduce their rentals to retain or attract tenants and the weaker parties in the landlord/tenant relationship.

A landlord with property as an asset will seek to maintain its value is a consumer in need of protection from unscrupulous tenants who do not pay rent or abuse the landlord's property. Therefore the position of the landlord in the landlord/tenant relationship needs to be addressed through South African legislation, based on the consumer protection principles.

## **6 Conclusion**

Since the promulgation of the RHA, the rental housing market has shifted. There is currently an oversupply of rental housing stock and this means that the tenant is now the party in a stronger bargaining position than the landlord. Consumer protection principles dictate that a party in a weaker bargaining position must be protected by legislation. In South Africa, the tenant was in a weaker position, but the situation has changed. Now, the landlord needs protection from exploitation by tenants. Thus, the authors have positioned the landlord as a consumer in

the rental housing market and argued this point in order to alter conventional methods of thinking that the tenant is the only party worthy of protection as a consumer.

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