

Simply Legal



Body Corporate can disconnect electricity with High Court order

Who can turn the lights off?

In this instance, the answer is not Eskom! Up to this point, the only approach to collecting arrear levies and utilities in sectional title schemes has been to follow the laborious debt collection process and wait your turn. Judgments and more importantly, attachments can take years to be effected! This could all but sink a body corporate ... until now.

In the time it takes to get a Judgment, arrear levies can increase exponentially. In the past, a body corporate could not disconnect utilities when faced with the prolonged non-payment of utility accounts. Together, Michelle Dickens - MD of TPN Credit Bureau and Peter Mennen an associate at SSLR Inc., have had a major breakthrough in the Courts however!

Dickens and Mennen launched an application in the South Gauteng High Court last week. The application involved a claim for the full amount of R67 937.58 which was owed to the body corporate. It included a claim that should the owners not settle the debt immediately and in full, the body corporate could mandate contractors to terminate the electricity and restrict the water supply to the premises.

The application was heard on 11 November 2015 with the Court finding in favour of the body corporate and ordering the immediate payment of all arrear amounts. More importantly, the Court held that a contractor could be appointed to disconnect the electricity should the payment of the outstanding electricity bill not be made in full. As for the other utilities, the body corporate was authorised to limit the water supply to 6

kiloliters per month unless payment was received in full.

Judge Mailula was definitive in his ruling. He held that for juristic entities and individuals, the argument that the supply of utilities should be subsidised where the occupant refuses to make payment of amounts legitimately owed was without merit. This means that no body corporate or individual can be expected to subsidise the utility supply where the occupant is required to refund the owner or the body corporate for their usage. The Judgement therefore gives owners and body corporates the power to mitigate damages and collect outstanding amounts more expediently.

As Ms Dickens clarifies, “In a predominantly consumer driven environment where the tenant has been granted ample protection, the Courts are finally starting to take cognisance of economic realities and starting to also consider the needs of landlords, agents and body corporates. The true impact of this judgment lies in the fact that not only can the body corporate immediately disconnect the utility supply in order to mitigate its’ damages, it can immediately issue a Warrant of Execution in respect of the outstanding amounts.”

Mennen reminds the readers, “It is essential to remember that a Court order is always required before any utilities may be disconnected or restricted. This is regardless of whether the property in question is a commercial, retail or a residential property.”