

AN EVALUATION OF CONFLICT IN LANDLORD AND TENANT RELATIONSHIP ON RESIDENTIAL PROPERTY IN IBADAN, OYO STATE

Introduction

Housing has been globally recognized as one of the most essential needs of man, and undoubtedly, has a profound impact on the health, welfare and productivity of an individual. The provision of adequate housing in Nigeria remains an intractable problem facing human and national development. Acute shortage of adequate housing has become a recurring decimal, particularly in the urban areas, as a result of the rise in human population and the effect of rural – urban migration.

Ibadan, the capital city of Oyo State, Nigeria, also has its fair share of these problems with a litany of cases flooding the various courts and tribunals set up by law. Dispute between property owners (“Landlords”) and occupiers of their property (“Tenants”) are among the most contentious after issues of land ownership in the city as both parties often engage in protracted legal battles. This is as a result of the fact that the major stakeholders in tenancy contracts namely the landlord and tenant do not often abide by the terms of the tenancy agreement or that the landlord and tenant relationships started on a parole lease where essential terms as agreed upon are misinterpreted or misunderstood in the event of a dispute.

These problems often times stem, particularly, when there is a breach of the tenancy agreement of the parties, such as failure to pay rent as and when due, unlawful or unilateral rent increase, unlawful eviction of tenant from leased property, cases of serious management problems, particularly where control of the management has been retained by abrasive landlords who neglect repairs and maintenance amongst others. Other common grounds on which dispute could arise are where the tenancy has been determined, either by the necessary notices, effluxion of time, or by any other mode, but that the tenant has refused to renew his rent, or that the tenant is in arrears of rent and in all cases, has refused to give up vacant possession.

This article examines these problems and proffers solutions in line with best practices.

Features of the Landlord and Tenant Relationship

A tenancy is a legal relationship which exists between two parties by which one occupies the other’s land or property in exchange for a consideration which is usually a rent. The relationship most times is contractual in nature and created by an agreement for a definite term. The terms of the agreement are basically express and implied covenants on the part of both parties.

Other essential features of this relationship include:

- Expressions of Intention – The landlord and tenant have the capacity to enter into a lease contract. The Landlord must have the power to create a lease/tenancy and the Tenant is capable of taking the demise property.
- Certainty of property – the demised property must be ascertainable and described with precision and must be in existence at the commencement date.
- The requirement of Exclusive Possession – that the title to the property is not conveyed, only the right to exclusive use and occupation of the property is transferred to the tenant.
- Certainty of term - a relationship subject to a definite time limit or term of years, with a fixed or ascertainable date of commencement and expiration as it cannot enure in perpetuity. In terms of duration, it must have a certain beginning and an end, for example, weekly, monthly, quarterly or yearly.
- Certainty of terms - the existence of covenants, obligations, or performance, and must be clearly spelt out.
- The right to reversion -the Landlord has the right of reversion of the property after the expiration of the tenancy and retains the ownership of the property after the tenancy.

Common Areas of Conflicts Between Landlord and Tenant

Conflicts are inevitable in all spheres of human relationship whether contractual or otherwise. In resolving issues relating to a contractual obligation, the law is that parties to a mutual agreement are bound by the terms contained in their agreement. Hence, a party cannot change or vary terms of a contract by incorporating terms not agreed upon. The court also has a duty to enforce the terms of those agreements written down and signed by the parties involved, when called upon to do so provided the terms are not illegal or contrary to public policy – **ISYAKU V. DR. J.S ZWINGINA**¹

Some of the areas of conflict between the landlord and tenant are discussed below in *seriatim*:

i. Payment of Rent

Under Section 2(1) of the **Recovery of Premises Law**² Rent,

¹ (2001) FWLR (Pt.72) 2096 at 2112, paragraphs A-B

² CAP 144, Volume V, Laws of Oyo State, 2000

“includes any part of any crop rendered, or any equivalent given in any kind or in labour, in consideration of which a landlord has permitted any person to use and occupy any land, house, premises or other corporeal hereditament.”

Rent in the above sense and in general is construed as a consideration paid to the Landlord either in cash or kind, by a tenant to entitle him to a right over the Landlord's property. In every form of tenancies, payment of rent by the tenant to secure the premises together with its appurtenance is not merely a covenant but a key factor which serves as a link between the parties.

It is a common practice, to have tenants who do not pay rent as and when due. Constantly dealing with such tenants by landlord can be exasperating especially if they are repeat defaulters.

On a flip side, unlawful increase of rent by Landlords especially where the interval for rent increment is not specified in the tenancy agreement, constitute another area of dispute. A Landlord is not permitted to unilaterally increase rents payable by the tenant at will. Since a tenancy is contractual in nature, all parties must negotiate and come to an agreement especially if the previous rent has been agreed upon at a fixed rate. A tenant can institute an action against the landlord for a refund of the unlawful excess of rent.³

More so, most landlords do not give adequate time or even formal notice of increment to tenants. This has often time led to delay in payment or even an outright refusal to pay.

It is important to note that where there is a breach in the payment of rent, the landlord cannot resort to self-help⁴ such as entering into the demised premises to destroy the tenant's properties or seizing the tenant's personal effects in order to compel the tenant to pay rent. Where this is the case, the tenant is at liberty to institute an action against the Landlord for damages. It is however advisable for a landlord to approach the court for recovery of premises.

As regards rent increase, Statutes have evolved in Oyo State to curb the arbitrary rent increases especially in urban areas and thus protect helpless tenants⁵. To that effect, provisions of rent intervals and increment should be clearly specified in the agreement, with enforcement and collection rules clearly stated and agreed upon.

³ Section 7 of the Rent (Increase Restriction), CAP 145, Laws of Oyo State, 2000

⁴ The preponderance of legal authorities is against self-help, the *locus classicus* being the celebrated case of *Ojukwu V. Governor of Lagos State* (1985) 2 NWLR (pt.10) 806. See also *Navy V Garrick* (2006) 4 NWLR (Pt.969) 69.

⁵ Rent (Increase Restriction) Law, Cap 145, Volume V, Laws of Oyo State 2000.

ii. Quiet Possession

Once rent is paid as consideration for the demised property, the Landlord is obligated to ensure that the tenant have quiet enjoyment of the demised premises within an agreed period to the exclusion of all other persons, the Landlord inclusive. In the same vein, a tenant has an absolute right over the demised premises or property and is entitled to freedom from unreasonable disturbance from the Landlord, his agents or servants.

The circumstance under which a Landlord can enter a premise is when he intends to carry out inspection or performs maintenance works on the property. This must be done with the knowledge of the tenants within reasonable hours of the day. However, in cases of an emergency, like abandonment of or surrender of the leased premises, the Landlord may enter without notice.

A tenant can institute an action for trespass, if whilst the tenancy is subsisting and the tenant is in lawful occupation and possession, the Landlord forcefully enters the premises without foreknowledge of the tenant or in an attempt to recover possession without service of valid notices.

Though the Landlord owns the property, the tenant is entitled to the right of exclusive possession. It is advised that the agreement clearly defines the rights of the parties. It is worthy of note, that there should be no provisions in the agreement which allows the landlord unrestricted entry into the premises

iii. Forceful eviction of tenant from leased property

This situation may arise where the tenant refuses to renew his rent upon the expiration of the tenancy or where the tenant is in arrears of rent and has refused to give up possession of the property and the Landlord seeks to recover his premises.

As a principle, a Landlord is expected to provide tenants with written eviction notices⁶. On no condition should a Landlord resort to self-help or employ extra judicial means to forcefully evict a tenant from the demised property where tenants continue to remain on the property after the expiration of the eviction notices. He will be liable in trespass and the tenant will be entitled to damages for the actions of the landlord.

It therefore follows, that an aggrieved landlord must apply to court to commence a formal eviction proceeding for recovery of premises to eject a tenant and act only on the order of the court.

⁶ Section 7 of the Recovery of Premises law, CAP 144, Volume V, Laws of Oyo State, 2000

In the case of *Eloichin v. Mbadiwe*⁷ the Court held that:

“The laws of all civilized nations have always frowned at self-help if for no other reason that they engender breaches of peace. It is no doubt annoying, and more often than not, frustrating for a landlord to watch helplessly his property in the hands of an intransigent tenant who is paying too little for his holding, or is irregular in his payment of rents or is otherwise an unsuitable tenant for the property. The temptation is very strong for the landlord to simply walk into the property and retake immediate possession. But that is precisely what the law forbids’

On a related note, in the case of *Akinkugbe V. Ewulum Holdings Nigeria And Another*⁸ the court had this to say:

“a landlord who resorts to self-help to recover property leased by him runs foul of the law and is liable in damages”.

In all, the court frowns at self-help or extra judicial action taken by Landlord to evict a Tenant from property and have awarded damages or reliefs for forceful eviction

iv. Incomplete refunds of deposits

It is the practice in the city to pay unfairly large amounts of money as security deposits otherwise called caution fee while occupying a premises. The caution fee stands for a deposit made by a tenant to a landlord in the event that damages occur during the period of the tenancy.

The norm is that the caution fee is reserved with the Landlord throughout the tenancy and will be returned after the expiration of the tenancy, provided that the property is returned in the same condition as it was leased to the tenant at the start of the tenancy.

At the time of leaving, often, only a partial amount of this security deposits may or may not be returned to the tenant. Where there is no damage or default as to rent, the caution fee should be paid to the tenant in full.

It is important that the agreement is drafted to indicate that the caution fee is refundable. Further, the tenant should replace or fix any damage to the property before handing over and should inform the Landlord of any repair done.

v. Repairs and maintenance on the demised Property.

⁷ (1986) 1 NWLR (Pt. 14) at 47, Per Anialogu JSC

⁸ SC 316/2002 [2008] at 135, Per Aderemi JSC

In practice, where it is expressly stated on the lease agreement, the Landlord is under an obligation to carry out structural and external repairs (repairs of main parts of the house like main walls, roofs etc.), while the tenant effect minor repairs (interiors, floors, windows etc.)

Where a Tenant carries out structural and external repairs on the property with the prior consent of the Landlord in writing and has given notice of repair, the Tenant is entitled to receive a refund from the Landlord for the amount expended on such repairs.

vi. Denial of Landlord's title

One unusual area of conflict of interests between the parties is when a tenant denies or refuses to recognize the title of the Landlord in respect to the demised premises.

It is presumed that at the commencement of tenancy relationship between the landlord and the tenant, that the tenant recognizes the title and ownership rights of the Landlord to the demised property.

Section 170 of the Evidence Act⁹ provides as follows,

“no tenant of immovable property , or person claiming through such tenant, shall during the continuance of the tenancy , be permitted to deny that the Landlord of such tenant had, at the beginning of the tenancy , a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession of it shall be permitted to deny that such person had a title to such possession at the time when such license was given”

The Court has also confirmed this principle of law in the case of **ABEKE V. ODUNSI**¹⁰ the Court held as follows:

‘A tenant is stopped from disputing the title of his landlord. this applies to written and oral tenancy agreements as well as to leases under seal. thus, a leasee cannot dispute his lessor's title by setting up an adverse title while retaining possession”

The law assumes that a landlord is the owner of the property given to a tenant and consequently prohibits the tenant from challenging and disputing the ownership rights of his landlord to such property. Once a tenant challenges the ownership rights/title of his landlord, the tenant automatically forfeits his tenancy¹¹.

⁹ Evidence Act, 2011

¹⁰ (2013) ALL FWLR (Pt. 697 at 673, paragraphs E-F

¹¹ Irrogharo V. Uffomadu (2009) 11 NWLR (Pt.1153) 584

Conclusion

It is a notorious fact that conflicts are bound to exist in human relationship and same applies to a tenancy relationship since the relationship is one of mutual concerns and benefits.

However, to ensure peaceful relationship and forestall the displeasures of litigation, it is advisable that both parties play fair and be honest in their dealings. Litigation as an activity does not markedly contribute to the happiness of mankind although it is something unavoidable – **GALIE V. LEE**¹². That is why the Court, has always advocated for peaceful settlements.

It is pertinent to engage the services of a Legal practitioner to draft and review deeds of leases/tenancy agreements with a view to ensuring that the interests of the respective parties are adequately protected. Again, an aggrieved party whose contractual rights has been breached should engage the services of a legal experts to enforce his rights rather than resorting to self-help.

¹² (1969) AER