

LANDLORD VS TENANT: LOVE & HATE RELATIONSHIP


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1. INTRODUCTION TO TENANCY LAW IN MALAYSIA

- Under the National Land Code, any rental under three years is defined as a ‘tenancy’, and does not require registration.
- There are two types of tenancy :-
 - **Revocable** : Can be revoke my giving the requisite notices;
 - **Irrevocable** : Tenancy that cannot be revoke for a specific tenure define under the tenancy. If revoke, the balance of the tenure will be the agreed liquidated damages.
- There is no specific legislation governing tenancy agreements in Malaysia, neither there a “standard” tenancy agreement required by law.

- The law that impact the rights and responsibilities of tenants and landlords are as follows :
 - **Contracts Act 1950** – is the legislation which would cover conflicts on the tenancy agreement
 - **Civil Law Act 1956** – is the legislation which would cover payment disputes
 - **Distress Act 1951** – is the legislation covering matters of eviction
 - **Specific Relief Act 1950** – prohibits a landlord evicting the tenant or making the property inaccessible to tenants without a court order
 - **Common Law/Case Law** – is an overarching framework which would cover rental disputes
 - Court cases also provide guidance on how Courts will interpret the laws and determine the rights of landlords and tenants.
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2. SALIENT TERMS AND CONDITIONS UNDER RENTAL/TENANCY AGREEMENT

Tenancy Agreement normally includes clauses on: -

- tenure;
- monthly rental;
- late payment charges;
- security deposit;
- Repairs-to the state it was first let to the tenant;
- Manner of delivery;
- renewal;
- Assignment and subletting;
- Maintaining fixtures and fittings;
- Purpose of usage either residential or commercial;
- Landlord's right for entry and inspection;
- Landlord's obligation to maintain structure (roofing, piping and walls); and
- termination.

DEFINITION OF SECURITY DEPOSIT & RIGHT TO CLAIM

❑ **Definition of security deposit:**

A type of a deposit where a landlord will require a tenant to pay a two or three month's rental and a deposit for utility for ½ month rental. This deposit shall be refunded at the end of tenancy period without interest and less any liabilities incurred by the tenant upon termination of tenancy.

- ❑ In a situation where the landlord refuses to return the deposit money, the tenant may bring this matter to Court as the landlord is deemed to breach the Contract Agreement where both parties have agreed upon.

- In the case of **BBMB Kewangan Berhad v Kueh Teck Swee [2001] 2 AMR 1401**, the issue before Ian HC Chin J. at the Kuching High Court was whether the landlord can forfeit the security deposit?

The court held that his rights to do so depend on the express term contained in the tenancy agreement. On the facts, since the tenant had not been in breach of the specified covenants, the landlord has no right to forfeit the deposit. He is obliged to refund the deposit to the tenant after deducting such sums incurred in carrying out repairs to the premises on expiry of the tenancy.

❑ **Issue 1: Can the landlord use the security deposit money for repairs?**

It depends on the contract. Once a contract mentions and/or specifies that the landlord may forfeit the security deposit if the property is returned half-destroyed, then the landlord may use the security deposit to cover for the cost of repairs. A security deposit is also known as a financial collateral for the landlord in case the tenant causes damage, or choose to disappear without paying rent.

❑ **Issue 2: What happens when the contract is silent on using the security deposit money for repairs?**

In *BBMB Kewangan Berhad v Kueh Teck Swee* [2001] 2 AMR 1401, the issue is whether the landlord can forfeit the security deposit. The court held that his rights to do so depends on the express terms contained in the tenancy agreement. Therefore, when there is no express term in the contract, the landlord has no legal authority to use the security deposit for repairs. Alternatively, the landlord may bring an action against the tenant under a breach of contract.

□ **Issue 3: What happens if the security deposit held by the landlord is not enough to cover all losses caused by the tenant?**

If the damage to the property caused by the tenant is so substantial where the security deposit money is not enough to cover all losses, then the landlord may bring the matter before the court and seek compensation for loss of rental income against the tenant. Further, to avoid this issue beforehand, it is wise to include a clause in the tenancy agreement on the obligation to reinstate or restore the premises to its original condition at the expiry of the tenancy and to compensate the landlord for whatever damages caused to the premises.

3. SITUATIONS OFTEN FACED BY THE LANDLORD AND/OR TENANT

Situation 1: What happens if the tenant failed to pay the rent?

The rights of a landlord:

- A landlord may resort to claim the outstanding sum for breach of contract.
- A landlord may also recover the unpaid rent by way of writ of distress pursuant to Section 5 of Distress Act 1951.
 - the movable properties of the tenant shall be seized and sold to cover the rental arrears. An application for distress shall be made to Court for an order to issue a warrant of distress.
 - Landlord may recover the rent due or payable by a tenant of any premises for a period not exceeding twelve completed months of the tenancy.


Situation 2: What happens if a tenancy is created by a written or oral agreement for duration less than 3 years?

- **Based on Section 223 of NLC, a duration of a tenancy with a period of 3 years or less may be created either by way of a written document or by words of mouth.**
- **However, a tenancy with a period of more than three years is known as a lease and it has to be registered in order to get a recognized protection under the NLC as reflected in Section 213(2)(a), Section 221 of NLC.**

Situation 3: What happens if a tenancy is exempted from a registration and no endorsement made on the document of title? Will it affect the rights of the tenant and/or landlord?

- It does not nullify the contract.
- It is still valid as a contract under Contract Act.
- Failure to register a lease or to make endorsement of a tenancy will leave the tenant to get protection under the law of contract only as decided in Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719

4. NULL AND VOID AGREEMENT

- **A tenancy agreement may be declared null and void.**
 - **What causes a null and void tenancy agreement is subject to the terms and conditions of the agreement.**
 - **Example: the premise is used for an illegal purpose such as gambling, prostitution and drugs related crime**
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5. RIGHTS AND LIABILITIES

- The rights and liabilities of a landlord and tenant can be observed in few statutes in Malaysia namely National Land Code 1965, Contracts Act 1950, Specific Relief Act 1950, Distress Act 1951, Civil Law Act 1956.
- Landlord rights under the following statutes: -
 - Contracts Act 1950
 - Entitled to every right that have been mutually agreed by both parties in the contract.
 - Landlord may be entitled to a remedy if there is a breach of contract on the part of the tenant.

❑ **National Land Code 1965**

S. 234 of NLC 1965 (Power of forfeiture) provides that every tenancy exempt from registration, whether granted before or after the commencement of this Act, shall, be liable to forfeiture if the tenant-

- a) breaches any of the provisions thereof, express or implied;
- b) is adjudicated bankrupt; or
- c) being a company, goes into liquidation

❑ **Specific Relief Act 1950**

- S.7 of SRA (Recovery of specific immovable property) provides that eviction of tenant can only be made upon obtaining the court's order. Upon tenant's failure to pay rent on time and after a notice to pay is served to the tenant but still failed to make payments, the landlord may serve a notice of termination and file a lawsuit to obtain the court's order to evict the tenant.
- Landlords are prohibited from evicting the tenant, change the locks, and few others, without a court order.

❑ Distress Act 1951

- **S.5 of Distress Act** (Application for warrant of distress) provides that a landlord or his agent may in writing apply ex parte to a Judge or Registrar for an order to issue a warrant of distress for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding twelve completed months of the tenancy
- **S.7 of Distress Act (Warrant of distress)** provides that a warrant of distress shall be addressed to the bailiff, directing him forthwith to distrain any movable property found by him on the premises named therein or such part of the property as may in his judgment be sufficient, when sold, to realize the amount of rent therein stated to be due to the applicant, together with such sum as may be due to the applicant by way of costs and to the bailiff for his fees and expenses:
- Provided that before a warrant of distress is issued the court may require the applicant to pay into court in cash such sum as the court considers necessary to cover the fees and expenses of the bailiff

❑ **Civil Law Act 1956**

Rents to accrue day to day

- S.16B of CLA 1956 (Rents, etc., to accrue from day to day) provides that all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

Apportioned part of rent

- S.16C of CLA 1956 (Apportioned part of rent, etc., to be payable when the next entire portion due) provides that the apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable, in the case of a continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part forms part becomes due and payable, and not before; and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before.

Holding over and double rental

-S.28 (4) (a) of CLA 1956 (No person chargeable with rent bona fide paid to holder under defective title) provides that every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

□ Civil Law Act 1956

Subtenant as an occupier

- S.28 (5) (a) of CLA 1956 (No person chargeable with rent bona fide paid to holder under defective title) provides that when any writ or summons issued by a landlord against a tenant for the recovery of immovable property is served on or comes to the knowledge of any subtenant of the plaintiff's immediate tenant, the subtenant being an occupier of the whole or any part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting three years' rack rent of the premises held by the subtenant to the person of whom he holds, to be recovered by that person by action in any Court having jurisdiction.

Tenant rights under the following statutes: -

❑ Contracts Act 1950

Entitled to every right that have been mutually agreed by both parties in the contract. For instance, maintenance of the property to be maintained by the landlord.


❑ Distress Act 1951

S.16 of Distress Act (Application by Tenant) provides that the tenant may apply to a Judge to discharge or suspend the execution of the warrant, or to release any part of the property seized.

❑ Civil Law Act 1956

S.28 (1) of CLA 1956 (No person chargeable with rent bona fide paid to holder under defective title) provides that no person shall be chargeable with any rents or profits of any immovable property which he has bona fide paid over to any person of whom he bona fide held the same notwithstanding it afterwards appears that the person to whom the payment was made had no right to receive such rents or profits.

6. SECURITY OF TENURE/ OCCUPATION

- **Security of tenure is a tenant's right to stay in rented accommodation for a set amount of time. Generally, security of tenure applies automatically when a tenant rents for a period of time and haven't received a valid notice of termination from his/her landlord in that time.**
 - **When a tenant has security of tenure, his/her landlord can only terminate the tenancy for a limited number of reasons. For instance, breach of tenancy agreement by the tenant and others.**
 - **The term of tenure for tenancy and/or lease can be classified into 3 types. Namely, fixed-term tenancy, periodic tenancy and tenancy at will.**
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CLASSIFICATION OF TENANCY

❑ **Fixed-term tenancy**

A fixed term tenancy has a definite beginning date and ending date and may have an option to renew in the agreement.

❑ **Periodic tenancy**

A periodic tenancy is a tenancy for some period of time as determined by the term of the payment of rent. Tenancy can be from year to year; month to month or week to week.

❑ **Tenancy at will**

A tenancy agreement where a tenant occupies a property with the consent of the owner and there is no written agreement between the parties that specifies a definite payment of rent or the tenure of the rental. It can be terminated by either the landlord or the tenant at any time by giving reasonable notice. This type of tenancy also may arise when a tenant holds over upon expiry of the initial tenancy period or when a tenant under a void tenancy goes into occupation but has not yet paid rent.

❑ Tenancy at will (cont.)

The same has been defined in the Federal Court case of **Rohasassets Sdn Bhd v Weatherford (M) Sdn Bhd & Anor [2019] MLJU 1484**, where the court referred to Cheshire and Burn's *Modern Law of Real Property* (15th Ed, 1994) for the meaning of a 'tenancy at will' according to the common law where:

“A tenancy at will may be created either expressly (eg Manfield & Sons Ltd v Botchin [1970] 2 QB 612 or by implication, as for example, where a tenant, with the consent of his landlord, holds over after the expiry of the lease; or where he goes into possession under a contract for a lease or under a void lease;...or a prospective tenant goes into possession during negotiations for a lease (British Airways Board v Bodywright Ltd (1971) 220 EG 651.”

8. ORDER OF EVICTION (PENGUSIRAN)

- In the event where a tenant breaches the tenancy agreement, the landlord may evict the tenant pursuant to Specific Relief Act 1950 ("SRA 1950")
- Section 7 of the Act for recovery of specific immovable property
- Section 7(1) of SRA 1950 provides that a person is entitled to the possession of specific immovable property may recover it in the manner prescribed by the law relating to civil procedure.

NO SELF HELP REMEDY

- Section 7(2) of SRA 1950 provides that the tenancy is determined or has come to an end, but the occupier continues to remain in occupation of the property or part thereof, the person entitled to the possession of the property shall not enforce his right to recover it against the occupier otherwise than by proceedings in the court.
- Although tenancy in general has no specific regulation/statute to regulate the relationship between Landlord and a Tenant, these said provisions are related to damages where a landlord can claim from the court to enforce his/her rights as a landlord.
- Hence, a landlord may evict the tenant from his/her property, provided that he/she has obtain orders from the court. Failure to do so, the landlord may be liable for trespass to land.

Situation 1: What happens if a tenant refuses to vacate the premise after the expiry of tenancy?

A landlord may seek an order from the court to evict a tenant and to repossess his property as provided under Section 4 and 7 Specific Relief Act 1950.

8. TERMINATION OF TENANCY

- A tenancy agreement may or may not provide the right for either party to terminate the agreement before the tenancy ends.
- Tenancy Agreement that includes an early termination clause
 - A notice of termination or notice to vacate must be given to the tenant within the period stated based on the tenancy agreement before its expiration. The landlord has the right to vacant possession of the premises from the tenant without payment of any compensation.

- On the other hand, in situation where the tenant wants for an early termination of the agreement, the landlord rights is said to be protected as the agreement will still be binding to the tenant as well. Hence, if both parties entered into a 2-year tenancy agreement subsequently the tenant wants to terminate the agreement after a year, the tenant has the obligation to pay the remaining 12-months outstanding rent to the landlord.

❑ **Tenancy Agreement that does not include an early termination clause**

- When there is no clause provided under the agreement to allow an early termination, a landlord may not terminate the tenancy agreement prematurely. The agreement will still be in effect despite the tenant is behind on rental payments. Hence, the landlord has to go through a legal means to collect the rental arrears such as, by way of a letter of demand or court order under the Specific Relief Act 1950 to evict the tenant.

9. RESTORATION OF PREMISE: WHAT TENANT AND LANDLORD SHOULD KNOW

- In general, there would be a Restoration Clause inserted in a tenancy agreement. With a Restoration Clause, there will be an obligation for a tenant to restore, at the landlord's request, the premises back to the condition it was in before possession of the space by the tenant.

- **Question: whether there is a clause on restoration upon expiration of tenancy?**

Generally, restoration and repairs are used interchangeably. Commonly, the clauses provide the same content, unless the clause expressly provides the intended meaning otherwise.

THANK YOU

