

SECURITY OF TENURE IN LAGOS STATE

Tenancy is a legal relationship which exists between two parties, wherein one party having an interest in a property grants to another an estate or proprietary interest in that property in return for a consideration (usually rent) with a right of reversion. Usually the tenancy relationship is contractual but it can also arise by operation of law. The person who owns and grants an estate in a property to another is called the landlord, while the person who is granted a proprietary interest in a property is called the tenant.

The relationship between landlords and tenants in Nigeria have considerably evolved over the years. It appears the whole essence of the law of landlord and tenant is to protect tenants from abusive landlords. According to Garner¹, landlord and tenant relationship refers to a familiar legal relationship existing between the lessor and lessee of real estate.

Lagos State is no doubt one of the most populated states in Africa, the effect of this, is the shortage of accommodation and “cut throat” rent regime resulting from ravenousness of landlords, insufficiency of reasonably priced housing, high cost of lands as well as impediments associated with obtaining building permits from relevant authorities which have all impacted deleteriously on the relationship between landlords and tenants.

Security of tenancy tenure is a fundamental element of right to adequate housing. The idea of security of tenure in law and practice is to provide protection against forceful

¹ Garner, B.A., 1999. Black's Law Dictionary, Seventh Edition St. Paul MINN; p. 883

eviction which leaves the vulnerable tenants at the risk of a range of human right violations.

Right to adequate housing is recognized under Chapter 2 of Constitution², particularly in sections 15(3)(b) and 16(2)(d).

Section 15(3)(b) provides as follows, *“for the purpose of promoting national integration, it shall be the duty of the state to secure full residence rights for every citizen in all parts of the federation”*.

By this provision, the state has an obligation of providing adequate and suitable residence for all citizens in the federation.

Section 16(2)(d) provides that, *“the state shall direct its policy towards ensuring that suitable shelter, are provided for all citizens”*.

Though the right to housing as provided in the constitution of the Federal republic of Nigeria is laudable, it is limited to the extent that it is not enforceable and justiciable in courts³.

Due to ceaseless growth in the population of the state and the need to provide appropriate and inexpensive accommodation for the rising population, the state legislature makes rules to regulate the relationship between landlords and tenants in order to avoid arbitrary increments in rents, wrongful eviction and illegal holding over of premises.

² Constitution of the Federal Republic of Nigeria, 1999.

³ Section 6(6)(c) Constitution 1999, *Olubunmi Okojie v. A.G Lagos State* (1981) 2 NCLR 337

The term “Security of tenure” has been defined to refer to the statutory right conferred on a tenant to continue to occupy a premises until he voluntarily gives up possession or the landlord obtains a court order for repossession of the property.

The ultimate purpose for security of tenure is to provide legal protection to tenants of dwelling houses against arbitrary rent increases and landlord's attempts to repossess the property through eviction without just cause.

The Lagos State Tenancy Law repealed the Rent control and recovery of residential premises law vol.7 laws of Lagos State 2003. The law clearly defines the relationship between landlords and tenants in Lagos state as well as governs the rental of property. The basis of the legal relationship between a landlord and tenant is derived from both contract and property law⁴. Some major aspects of security of tenure in the Lagos state Tenancy Law are; prohibition from unlawful evictions, recovery of premise, protection from incessant increment of rent, prohibitions from demand and receipt of advance rent, etc.

The Lagos State Tenancy Law applies to all premises located within the territorial boundaries of the state⁵. It does not however cover residential premises owned and operated by educational institutions; premises provided for emergency shelter; hospice and health care facilities⁶. Also, areas such as Apapa, Ikeja, Ikoyi, and Victoria Island are exempted from the applicability of the law⁷.

The essence of the Lagos State Tenancy Law, 2011 is of two folds, to wit:

⁴ See Hon. Justice Onnogeh (JSC as he then was) dictum in *Nnodi V. Thanks Investment Ltd*

⁵ Section 1(1) Tenancy Law 2011

⁶ Section 1(2) Tenancy Law 2011

⁷ Section 1(3) Tenancy Law 20

- i. To afford tenants the greatest possible protection against exploitation and oppression by landlords by preventing arbitrary increment of rent and the unlawful eviction of tenants.⁸
- ii. To balance, unify and harmonize the interests and rights of the landlord with those of the tenant and thereby prevent inequitable and unfair bargains where one-party gains at the expense of the other party.

The law provides for right of tenants in a tenancy agreement. One of such rights is found in section 6 of the law which gives the tenant right of an exclusive possession of the premises, freedom from unreasonable disturbance, complete privacy and entitles the tenant to make use of common areas for reasonable and lawful purposes⁹. In the case of **Dickson & Anor v. Assamudo**¹⁰, it was held that,

“ The rights generally conferred by a tenancy agreement on a tenant include the right to peaceful and exclusive enjoyment of the possession of the demised property and the right against unlawful, forceful or illegal ejection or even interference from any one including the landlord while the tenancy lasts. In fact, even where a tenancy expires or a tenant breaches any or some of the terms and conditions of the tenancy, the right against forceful or illegal ejection may still subsists in favour of a tenant and can only be determined by the procedure prescribed by law.”

Section 4 of the Tenancy law criminalizes the payment and receipt of advance rent. In the case of a sitting monthly and yearly tenant advance rent of more than 6 months and one year respectively; while in the case of a new tenant whether monthly of yearly, advance rent for more than one (1) year.

⁸Ernest Ojukwu and Chidi Ojukwu, “Introduction to Civil Procedure”, Third Edition, Published in 2009 by Helen Roberts at Page 428

⁹ See also sections 8, 9 and 10 Tenancy Law

¹⁰ (2013) LPELR-20416(CA)

By virtue of section 37 of the tenancy law, a tenant is protected from the unilateral excessive increase in rent by the landlord. In the case of **Cobra Ltd v. Omole Estate and Investment Ltd**¹¹, it was held that a unilateral increase in rent by a landlord is an offer and not binding on the tenant until the tenant accepts the offers.

The law prohibits a landlord from resorting to self-help in recovering his premises. By virtue of section 44 of the Tenancy Law “any person who demolishes, alters or modifies a building or attempts to forcefully eject a tenant or threatens to molest a tenant with a view to ejecting a tenant and without the approval of the court is guilty of an offence and is liable to a fine not exceeding N250,000.00 (Two hundred and Fifty Thousand Naira) or an imprisonment term of not exceeding (6) months”.

In the case of **Ihenacho v. Uzochukwu**¹², it was made clear that a landlord can be sued and made to pay damages for unlawful eviction. In this case, the Supreme Court held that resort to self-help by the Landlord to evict a tenant who is in lawful occupation is not within the purview of the provisions of the recovery of Premises Law and that such a landlord renders himself liable to the tenant in trespass. In

In **Bello & Ors v. Doris**¹³ Per MUSTAPHA, J.C.A stated that "Forcefully ejecting the respondent and removing her belongings which to her are valuables from the house, amounts to assault by any definition and in the absence of an order of Court as argued for the respondent there is a clear infringement of the respondent's fundamental rights."

In **Tsegba & Anor v. Registered Trustees of Mission House & Anor**¹⁴, the position of the law on forceful eviction was restated thus; As between a landlord and his tenant, a resort to self-help is always frowned upon. A tenant in arrears of rent or other breaches of his

¹¹ (2000) 1NWLR (pt 6555)1, See also *Jovenco Nigeria Ltd & Anor v. Ibeozimako* (2014) LPELR-23599(CA)

¹² (1997) 1 SCNJ 117 at 284

¹³ (2016) LPELR-41298(CA)

¹⁴ (2018) LPELR-44242(CA), See also *Hadejia v. Ladan & Ors* (2018) LPELR-45638(CA)

tenancy agreement cannot be forcibly ejected from the landlord's premises without a Court order".

The law provides for procedure for the recovery of premises and these procedures are construed very strictly to the extent that a breach of any provision may be fatal to the entire proceedings. The tenant usually has the upper hand because every simple breach lengthens his stay in the premises. In **Oduye v. Nigeria Airways Limited**¹⁵, Eso, JSC noted, "The intention of the Edict was to make 'tenancy life' more abundant for the tenant to the detriment or hardship of the landlord." In practice many of the cases on recovery have been lost on account of irregular procedure adopted by lawyers. The 1991 Supreme Court case of **African Petroleum Limited v. Owodunni**¹⁶ where it took over eight years of trial for the plaintiff's lawyer to realize that all he needed was a 1 month quit notice to evict a statutory yearly tenant is quite instructive in this regard. In **Ndieli & Anor v. Eze**¹⁷, it was stated thus: "It is the law and it has been reiterated almost to irritation that recovery of premises must be done by due process of the law. Any other form of recovery is unlawful. It cannot be over-emphasized that recovery of possession of premises from a tenant by a landlord can only be by an order of Court obtained after hearing the parties pursuant to the relevant Recovery of Premises Law".

In order to undertake procedure to recover possession of premises in Lagos state, there are two essential conditions which must be satisfied. They are:

- a. There must be in existence some 'premises' as defined by Law. Section 47 of the Tenancy Law of Lagos State, 2011¹⁸.

¹⁵ (1987) 1 NSCC Vol. 18 (Pt. 1) p. 521 at 531

¹⁶ (1991) 7NWLR (Pt. 210) p.391

¹⁷ (2016) LPELR-42122(CA)

¹⁸ Premises except where it is expressly stated otherwise by this Law, includes premises used for business, residential and non-residential purposes.

b. The landlord-tenant relationship must be established¹⁹.

In the case of **Okedare V. Hamid**²⁰, **Coussey .J** observed that: "The main object of the Recovery of Premises Law was to place Limitations on the common Law rights of a Landlord with the object of regulating the recovery of and restraining summary eviction from occupied premises".

PROCEDURE FOR RECOVERY OF PREMISES

There are basically three (3) major steps to recover possession under the Lagos State Tenancy Law. They are;

1. Service of statutory notices
2. Institution of action in court to recover premises
3. Enforcement of judgement

STATUTORY NOTICES

There are two statutory notices that are required by law to be served on the tenant before an action for recovery of premises can be validly commenced. These notices are notice to quit and notice of owner's intention to recover possession. The service of these notices has been held to be a condition precedent for commencement of action for recovery²¹. Failure to give statutory notice as provided by the law has been held to be a condition precedent to the exercise of jurisdiction in tenancy matter²².

Notice to Quit

The process to recover a premise is initiated by service of a statutory notice to quit on the Tenant. This notice is usually applicable to periodic tenancy. It can be issued by the

¹⁹ Licensees are not contemplated under the Tenancy law, 2011. See section 47 of the Tenancy law.

²⁰ (1955) 15 WACA 17 at 19

²¹ Iheanocho v. Uzochukwu (1997) 2 NWLR (pt 487) 257 at 269. Sule v. Nig. Cotton Board (1985) 6 S.C. 62

²² Akpokiniovo V. Air Liquide Nigeria Plc. (2012) LPELR-9582(CA), Odigbo v. Abubakar & Ors (2018) LPELR-46473(CA)

landlord himself, his solicitor or agent with a written authority²³. The notice must specify the time within which the tenant shall quit and deliver up possession of the premises. It must properly describe the premises sought to be recovered²⁴, the tenant²⁵ and the nature of tenancy²⁶. The length of notice must not be less or shorter than the period agreed by the parties or the statutory prescribed²⁷. Failure to include any of these particulars in the notice to quit renders the notice invalid²⁸.

The length of notice is often stated in the tenancy agreement, however in the absence of such provision, the length of notice to be given for the purpose of terminating tenancy agreement shall be in accordance with the provisions of Section 13 (1) of the Tenancy Law which specifies the length of notices to be issued in accordance to the tenure of the tenancy as follows:

- i. A week's notice for a tenant at will;
- ii. One (1) months' notice for a monthly tenant;
- iii. Three (3) months' notice for a quarterly tenant;
- iv. Three (3) months' notice for a half-yearly tenant; and
- v. Six months' notice for a yearly tenant.

However, there are instances where the notice to quit can be dispensed with. In such circumstances, the seven (7) days owner's intention to apply to recover possession only will be served on the tenant. Such instances include;

- i. Where the tenancy expires by effluxion of time²⁹
- ii. In the case of a monthly tenancy in arrears of six months' rent³⁰

²³ *Ayiwoh v. Akorede* (1951) 20 NLR 4 at 5

²⁴ *Oshodi v. Okafo* (1975) CCHCJ 1093; *Kuye v. Nwogbo* (1978) 7CCHCJ 1865

²⁵ *Nigeria Joint Agency Ltd v. Match Co. Ltd* (1972) NMLR

²⁶ *Giwa v. Fagbeyisa* (1975) 10 CCHCJ 16

²⁷ *Dominic Nnadozie v. Anthony Oluoma* (1963) ENLR 77; *Oyekoya v. GBO Nig. Ltd* (1969) NSCC 69, *Odigbo v. Abubakar & Ors* (2018) LPELR-46473(CA)

²⁸ *Giwa v. Fagbeyisa* (1975) 10 CCHCJ 16.

²⁹ Section 13 (5) Tenancy Law

³⁰ Section 13 (2) Tenancy Law

- iii. In the case of a quarterly or half-yearly tenancy that is in arrears of one-year rent³¹.
- iv. In the case of a licensee³².
- v. In the case of an abandoned premises³³

The nature of tenancy is usually stated in the tenancy agreement. However, where the nature of the tenancy is not stated in the tenancy agreement for the purpose of computing or determining the length of notice, the nature of tenancy shall in the absence of any evidence to the contrary, be determined by reference to the time when the rent is paid or demanded³⁴. It need be pointed out that by virtue of section 13(4) of the Tenancy Law of Lagos state, notice to quit on a quarterly, half yearly and yearly tenant need not terminate on the anniversary of the tenancy but may terminate on or after the expiration of the tenancy.

Notice of owner's Intention to Recover Possession

Upon the expiration of the notice to quit or the determination of the tenancy, if the tenant or any person actually in possession of the premises or any part thereof fails, neglects or refuses to quit and deliver up possession of the premises or any part thereof, the landlord or his agent may cause a written notice of the owner's intention to proceed to recover possession to be served on the tenant³⁵. The notice must not be less than 7 days from the determination of the tenancy. In calculating the 7 days, it must be 7 clear days; the day of service must be excluded but the day of expiry must be included. The notice of intention cannot be issued and served before the expiry of the notice to quit or effluxion of time.

Services of Notice

³¹ Section 13 (3) Tenancy Law

³² Section 14 Tenancy Law

³³ Section 15 (2) (a) Tenancy Law

³⁴ Section 13 (6) Tenancy Law

³⁵ Section 16 Tenancy Law

Notice for recovery of residential premises shall be served personally on the tenant, or delivered to an adult on the premises on behalf of the tenant, or by courier to the premises sought to be recovered (with a corroborative evidence of service) or by pasting in a conspicuous part of the premises³⁶. For a business premises however, service of notice can be made by delivery to a person on the premises sought to be recovered or by pasting in a conspicuous part of the premises with a corroborative evidence of service³⁷.

INSTITUTION OF PROCEEDINGS TO RECOVER POSSESSION

Where all necessary statutory notices issued to the Tenant has expired and the Tenant has failed to surrender possession, the Landlord may file a claim for recovery of possession at either the Magistrate Court or the High Court depending on the rental value³⁸. The Landlord must prove grounds³⁹ such as arrears of rent, breach of any covenants of the Agreement, premises used for immoral or illegal purposes, the premises has been abandoned, the premises is unsafe and dangerous or that the conduct of the Tenant or a person living with him constitutes intolerable nuisance. The Landlord can also recover possession on the grounds that the premises is required by the Landlord for personal use or that the premises requires substantial repair.

APPLICATION FOR ENFORCEMENT OF JUDGEMENT

At the end of the procedure stated above, a successful Landlord shall apply to court for and shall be issued with a warrant of possession which entitles him by any means to enter

³⁶ Section 18 Tenancy Law

³⁷ Section 19 Tenancy Law

³⁸ Section 2(4) Tenancy Law

³⁹ Section 25 Tenancy Law

upon and repossess the premises. The certificate of warrant issued is valid for a period of 3 months, though is renewable 3 more times.

LIMITATION TO SECURITY OF TENURE UNDER LAGOS STATE

1. The provision of section 13(4) of the law which validates an ordinarily invalid notice scuttles the security of tenure of the tenant. This provides that notice to quit of a quarterly, half-yearly and yearly tenant need not expire on the eve of the anniversary of the tenancy. This provision is a clear negation of the concept of periodic tenancy in Lagos state. This provision is however peculiar to only Lagos state as recovery of premises laws of other state such as Abuja, Cross River, Rivers state etc clearly insist that tenancy must terminate on the eve of the anniversary of the tenancy otherwise the notice is void and a nullity.
2. The provision of the section 37 of the Law which subjects increase in rent to the agreement of the parties derogates from the path of protective policy which it sought to put in place in that it provides an escape route for the landlord. It is common knowledge that the tenants at the time of executing the tenancy agreement are at the mercy of the landlord, given that they are desperately in need of accommodation and merely signs whatever the landlord provides as mere formality. This provision unconsciously denies a tenant access to court based on an agreement without consensus ad idem.
3. The insistence of the court on strict adherence with the provisions of the law on recovery of premises in some instances occasion grave injustice to the landlord and thus give unscrupulous tenants the opportunity to hold over, frustrate and continue to do acts which might be detrimental to the premises in question.

CONCLUSION

It is no doubt that the essence of security of tenure is to shield tenants from the victimization and possible harassments from the landlord who in most occasion coerce them out of the premises without allowing them reasonable time to source for an alternative accommodation.

Though the law recognises the landlord's right of reversion in his premises, there are certain statutory requirements which the landlord must of necessity satisfy before he can exercise his right to recovery possession of his premises. Anything outside is this, is tantamount to self-help and the law frowns at self-help.

The Lagos state Tenancy Law 2011 is targeted at protecting the tenant against unlawful eviction by prescribing modus operandi of recovering premises. However, in the event the landlord resorts to ignore the statutory requirement, this outright and flagrant flaunting of the law may constitute a cause of action in civil liability or constitute an offence under the law.