

Landlords Versus Tenant: A Critical Appraisal of Conflict in Tenancy Law in Nigeria.

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Abstract. In Nigeria today, housing; particularly in the urban areas remains an intractable problem. Acute shortage of shelter is a common phenomenon as many people are chasing the few available accommodation. In recent times, the problem of shelter in Nigeria has reached a threatening stage with different fallouts ranging from socio-economic to legal and cultural impacts. The two major stakeholders in tenancy contract, namely: (i) Landlord and (ii) Tenant, now have their relationship regulated by plethora of tenancy laws in Nigeria.

This paper examines the duties and liabilities of landlord and tenant under the common law and diverse existing tenancy laws in Nigeria.

Critical issues such as types of tenancy, commencement of tenancy relationship and the legal procedure for terminating such relationships were carefully examined. It is observed that oftentimes there are conflicts between the landlords and tenants which attempts have been made by drafters of the law to either prevent or legally resolved. It is however the opinion of this writer that such tenancy laws should be reviewed to consider and accommodate other issues such as economic and sociological factors as legal consideration without more can neither prevent nor resolves conflict arising out of tenancy relationships.

Keywords: Landlord, Tenant, Conflict, Tenancy law, Nigeria.

1. Introduction

Shelter, undoubtedly is one of the fundamental basic needs of human beings in every part of the

world. Housing, particularly urban housing, remains an intractable problem in the developing countries of the world.

Nigeria has its fair share of acute shortage of urban dwellings. This problem is not unconnected with our population explosion and uncoordinated rural-urban migratory pattern, which exerts excessive pressure on housing demands in the cities.

The relationship between landlords and tenants in Nigeria has considerably evolved over the years, which therefore necessitated an appraisal and evaluation of how it is being regulated in modern Nigeria. This relationship is regulated and defined by two aspects of law, namely: (a) Property law and (b) Law of Contracts.

It appears the whole essence of the law of landlord and tenant is to protect tenants from abrasive landlords. According to Garner, landlord and tenant relationship refers to a familiar legal relationship existing between the lessor and lessee of real estate. The relationships is contractual, created by a lease (or agreement for lease) for a term of years, from year to year, for life or at will, and exist when one person occupies the premises of another with the lessor's permission or consent, subordinated to the lessor's title or rights. There must be a landlord's reversion, a tenant's estate, transfer of possession and control of the premises, and (generally) an express or implied contract.

2. Contents and Nature of Tenancy Agreement

Generally, agreement is a mutual understanding between two or more persons about their relative rights and duties regarding past or future performances; manifestation of mutual assent by two or more parties. In other words, the parties' actual bargain is found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

Agreement is nothing more than a manifestation of mutual assent by two or more parties legally competent to contract with one another. Creation of tenancies and the terms relating to the continuance of the relationship between a landlord and his tenant, the common law, equitable principles and general statutory provisions relating to the law of contract and land law apply.

In explaining what tenancy agreement depicts, Sir John Pennycuik stated that:

Where parties to an instrument express their purpose in entering into the transaction effected by it, or the purposes for which, in the case of tenancy agreement, the demised property is to be used, this expression of purpose is at least prima facie evidence of their true purpose and as such can only be displaced by evidence that the express purpose does not represent their true purpose.

The implied covenants, majority are two-folds, namely: (i) implied covenants of the landlord and (ii) implied covenants of the tenants.

1. **Implied Covenants of the Landlord**

a. Tenant to have quiet enjoyment of the property

The property of this covenant is two-fold (i) to protect the tenant against unlawful eviction or adverse claim to possession by any person, including the landlord from the property and (ii) to protect the tenant in occupation against interference with his normal use and enjoyment of the property. The landlord impliedly covenants with the tenant that the tenant's

enjoyment and possession of the property will not be disturbed by any act of the landlord, his agents or servants.

However, there are exceptions to this general principle, that is, the tenant must pay rent punctually and perform/observe his covenants in the tenancy agreement. A landlord does not have to observe this implied covenants if the tenant fails to pay rent or is in breach of other terms of the tenancy in which case he may take action to evict the tenant and claim damages for the tenant's breach. However, it is important to note that if a landlord disconnects the supply of water, electricity or gas to the property whilst the tenant is still in possession, such act will constitute a breach of this implied covenant.

b. **Fitness for habitation**

There is an implied covenant on the part of the landlord to ensure that the property is at the beginning of the tenancy reasonably fit for human habitation where the property is let with furniture. This covenant appears more pronounced in furnished tenanted apartment which ordinarily are made for immediate occupation.

Thus, in *Smith v Marrable* where furnished apartment was infested with bugs, the tenant quit without notifying the Landlord. It was held that he was at liberty to do so and he was not liable in the landlord's action to recover compensation for use and occupation of the apartment for the period he was in possession.

c. **Landlord not to derogate from his grant**
The landlord impliedly covenants not to directly or indirectly interfere with or affect the purpose for which the property was let to the tenant and his reasonable enjoyment thereof. For example where it was mutually agreed that the premises shall be strictly residential, it confers on the landlord an implied duty or covenant not to let the same property to any other person who wishes to use it for commercial purpose.

2. **Implied Covenants of the Tenant**

a. To pay rent as at when due.

Rent is usually paid in advance on a specified date of each week, month, quarter, year or any

other period as may be mutually agreed by landlord and tenant at the commencement of the tenancy. In a strict sense, rent is outstanding if not paid before midnight on the due date for payment.

b. Repair and maintain property's interior. This covers all the internal physical condition of the property and its fixtures, furniture and electrical appliances. This does not, however, cover fair wear and tear, structural and latent defects.

c. Payment of rates. It is important to note that where the landlord has not agreed to pay the rates, the implied obligation is on the tenant to pay the rates since rates are an occupier's obligation. Rates sometimes include water rate, electricity, sanitation (waste disposal) and other similar incidence. However, in practice, there is usually an express agreement between the landlord and the tenant as to who is going to pay the rates.

d. Yielding-up possession in a 'tenantable manner.' It is the tenant's implied obligation to use property in a reasonable and proper manner, take care of the property in such a way that its fitness for purpose will not decline or depreciate as to discourage a future occupier from renting same.

e. Covenant not to commit waste. It is implied under common law that a tenant shall not commit waste. "Waste" consists of any act or omission which causes a lasting alteration to the nature of the property to the prejudice of the landlord or such act as may impair title to the property.

The tenancy agreement usually contained basic issues like the names and addresses of the parties, period or duration of the tenancy, description of the property being let out, specific dates of commencement of tenancy and its expiration, amount of rent to be paid, renewal clause, rent-review, payments of rates, repairs of wear and tear, length of notice for termination of tenancy, whether the landlord allows sub-letting or not purpose of the tenancy

(residential/commercial), number of persons permitted to occupy a tenanted premises, and several other covenants which vary from parties to parties.

It is a very fundamental feature of tenancy agreement, particularly in Nigeria that tenants have more covenants and obligations under the agreement than the landlords. It is suffice to state that most of these tenancy agreements are drawn-up by the landlords personally or through their attorneys, agents or property managers.

However, in a bid to have fuller overview of the contents and nature of tenancy agreement, it is essential that different types of tenancies be examined. This will avail us variations in tenancy agreements as designed and applied to different forms of tenancies.

3. Types of Tenants/Tenancies

Generally, in any form of tenancy dispute, court pays premium on the contract entered into between the landlord and tenant and consider same as sacrosanct. It is the parties who decide the kind of tenancy agreement they are entering into, which in turn determines the kind of tenant. For instance, in determining the length of notice to quit, that could be given a tenant, the Recovery of Premises law of Oyo State will not be operative except where there is no express stipulation in the tenancy agreement, that is where the agreement is silent on the issue.

a. Statutory Tenant

The phrase 'statutory tenant', is found neither in the English Rent Acts nor in the Recovery of Premises law. A statutory tenancy is not created by agreement between the parties but judicially: even so its terms, apart from those relating to termination or succession, mirror those of the contractual tenancy.

In the early case of *Keeves v. Dunn*, Bankes (Lord Justice) said:

It is a pity that expression [statutory tenant] was ever introduced. It is really a misnomer, for he is not a tenant at all; although he cannot be turned out of possession so long as he complies with the

provisions of the statute, he has no estate or interest in the premises such as tenant has.

It has been proposed that a statutory tenant cannot assign or transfer his interest. And since the nature of the interest of a statutory tenant is that of a personal right of possession, he can neither sublet his interest nor transfer possession to a third party. If he does, the transferee would be a squatter vis-à-vis the landowner and he can use reasonable force to recover possession from him extra-judicially.

The statutory tenant is an occupier, who when his contractual tenancy expires, holds over and continues in possession by virtue of special statutory provisions. He has been described as ‘third anomalous legal entity’ that holds the land of another contrary to the will of that other person who strongly desires to turn him out. Such a person will not ordinarily be described as a tenant.

b. Periodic Tenant

This is a tenant whose tenancy automatically continues for successive periods, usually month to month, or year to year, unless terminated at the end of a period by notice. A typical example is a month-to-month apartment lease. This type of tenancy originated through court rulings that, when the lessor received a periodic rent, the lease could not be terminated without reasonable notice. The law is that a periodic tenancy may be created orally as it is less than three years at a time. The unquestionable rule is that a lease for not more than three years, taking effect in possession and for a full rent, can be formally valid without any document or ceremony at all, merely by the consensus of the parties. It is immaterial that the tenancy continues for decades. This is because a yearly tenancy is “a lease for a year certain, with a growing interest during every year thereafter, springing out of the original contract and parcel of it. . .”

c. Tenancy at Will

A tenancy at will may be created expressly or by implication of law. It is expressly created where land or tenements are let by a landlord to a tenant to be at will of either party. A tenancy at will may arise by implication where a tenant

holds over with the consent of the landlord after the expiration of the term granted, or where he goes into possession under a contract for a lease. Tenancy at will may be converted into a periodic tenancy where the tenant pays rent calculated by a specified period, for example, monthly, yearly or weekly etc. The Supreme Court of Nigeria in *Odutola v. Papersack Nigeria Limited* in describing the nature of tenancy at will opined:

A tenancy at will which is held by a tenant at will generally conveys a mutual wish or intention on the part of the tenant and the landlord in the occupation of the estate. There is general understanding that the estate may be generally terminated at any time. A tenancy at will is built into the mutual understanding that both the landlord and the tenant can terminate the tenancy when any of them likes or at any time convenient to any of them. In a tenancy at will the lessee (the tenant) is the tenant at will because the lessor (the landlord) can send him packing at any time the lessor pleases. In other words, the tenant occupies the estate at the pleasure or happiness of the landlord. This is however subject to proper notice emanating from the landlord.

Tenant at Sufferance.

This is a tenancy arising when a person who has been in lawful possession of property wrongfully remains as a holdover after his or her interest has expired. The Supreme Court of Nigeria in *African Petroleum Ltd. v. Owodunni* defines ‘tenancy at sufferance’ as follows:

A tenancy at sufferance is one in which the original grant by the landlord to the tenant has expired, usually by effluxion of time, but the tenant's right to occupation of the premises to which he had come in upon a lawful title by grant is at an end but, although he has no more title as such, he continues in possession of the land or premises without any further grant or agreement by the landlord on whom the right to the reversion resides. One necessary precondition of such a tenancy is that the tenant must have come upon the land or premises lawfully...

In contrast to the status of a tenant at will, the distinguishing feature of this kind of tenant simply holds over after his tenancy has come to an end by effluxion of time and without the will, agreement or consent of the landlord. This is strictly a common law concept.

Other varieties of tenancies include: (i) Joint tenancy – This is a tenancy with two or more co-owners who take identical interests simultaneously by the same instrument and with the same right of possession (ii) common tenancy is simply a tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship. The central characteristic of a tenancy in common is simply that each tenant is deemed to own by himself, with most of the attributes of independent ownership, a physically undivided part of the entire parcel.

A cursory look at all the aforesaid reveals clearly that only two broad types of tenants are known to our legal system. These are :

(a) Common law tenancy which is also known as the contractual tenancy and (b) Statutory tenancy.

The contractual tenancy has the inherent capacity of developing into other forms of sub-tenancies and types. These include the lease and the periodic tenancy which are types of tenancies under the contractual tenancy. On its own, the periodic tenancy, which is more common than the lease, recognizes six sub-types namely –

- (i) Weekly Tenancy
- (ii) Monthly Tenancy
- (iii) Quarterly Tenancy
- (iv) Half Yearly Tenancy
- (v) Yearly Tenancy and
- (vi) Tenancy at will.

4. Common Areas of Conflict between Landlord and Tenant

Conflicts and disputes which could be described as struggle, clash, disagreement or controversy which sometimes leads to a state of emotional tension is inevitable in human relations.

Generally, tenancy relationship is a contractual agreement between the landlord and tenant, while the terms of the agreement are basically express and implied covenants on the part of both parties. These covenants are obligatory in nature hence the performance is sacrosanct.

The initial dispute oftentimes stems from ‘clumsy’ and ambiguous tenancy agreement between the parties. In most cases the parties express covenants are not clearly spelt out which gives rise to the problem of interpretation of the content, an unscrupulous landlord or tenant may want to take advantage of this anomaly. As earlier observed, the terms of the agreement are usually lopsided, with the tenant carrying heavier responsibility which most tenants accept at the commencement of the tenancy due to desperation to secure shelter for themselves and their families. However, such tenants later become resentful to such an arrangement and therefore honour same in breach. Some of the causes of conflicts, or to put it mildly disagreement between landlord and tenant are traceable to social, economic and legal factors.

It is significant to state that law cannot be divorced from peoples’ status and behavioural pattern which is also a product of many factors. Some of the causes of conflict between the landlord and tenant are highlighted below:

a. Breach of Covenants

As word implies, ‘breach’ means breaking, infringement, or violation by one of an agreement by non-performance, or by both. Every breach gives rise to a claim for damages, and may give rise to other remedies. A breach could be in diverse forms, it may be one by part-performance, non-performance, or by both. Every to other remedies. Similarly, breach of covenant simply refers to violation of express or implied promise, usually in a contracts, either to do or not to do.

i. Rent:

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 a link between the parties. The Recovery Statutes including the

former cap. R6 of Lagos State have always defined rent as including:

...any money or money's worth whether in the form of crops, labour or otherwise paid or given as the case may be, in consideration of which a landlord has let a premises to a tenant.

It is fundamental to state clearly that our legal system does not put sociological component of poverty and status of the parties in perspective while interpreting tenancy agreement or applying the real property law (in the absence of an express contract, whether written or oral). For example, the court in *SCOA (Nigeria) Ltd. v. Bourdex Ltd.* held that, "in the absence of fraud or misrepresentation the party who signs an agreement is bound by it; in such a case the duty of the court is merely to construe the provisions of the agreement so as to discover the parties' intention.

The old system of levying distress against a rent defaulting tenant is now prohibited especially under the Rent Control Law of the various states. Forcible entry as an old means of evicting a defaulting tenant has been replaced by an action for recovery of land by judicially ejecting the tenant. Black's Law Dictionary defines, distress as: "The seizure of another's property to secure the performance of a duty, such as the payment of overdue rent," or the legal remedy authorizing such a seizure, the procedure by which the seizure is carried out.

However, such landlord has a right of forfeiture against the defaulting tenant. Forfeiture is only operative if the landlord can prove that he made a formal demand for the outstanding and due rent but the tenant refused, hence there is a right of action for forfeiture, for non-payment of rent.

ii. Quiet Possession

The landlord also has corresponding covenants to honour in tenancy relationship (both implied and express). However, one major covenant upon which threshold other covenants stand is "quiet possession." Traditionally, the only covenant implied in tenants' favour is one for quiet possession or enjoyment. This covenant is

so fundamental, that it is implied even in parol lettings and in mere tenancy agreement.

Lord Denning (Master of Rolls) defines the ambit and scope of the implied covenant for quiet enjoyment thus:

The covenant for quiet enjoyment... is not confined to direct physical interference by the landlord. It extends to any conduct of the landlord or his agents which interferes with the tenant's freedom of action in exercising his rights as tenant... It covers, therefore, any acts calculated to interfere with the peace or comfort of the tenant, or his family.

The above case depicts landlords' usual practice in post-colonial Nigeria. It is a reflection of total disregard for the law in general, and implied covenant of quiet enjoyment in particular. Such action includes: disconnection of electricity and water supply, removal of the roofing-sheets on the apartment (sometimes under the guise of purported renovation being undertaken) preventing the tenant from using the parking lots and other appurtenances and any other nuisance such as violating tenants' right of easement, for example, off-loading lorry-loads of sand at the entrance of the premises. Disputes between landlord and tenant sometimes turn bloody that it later becomes prosecution when one assaults or kills the other, or a third party. For instance, a man died in Lagos in the course of intervening in landlord and tenant fight. In another instance, three tenants in Kano Metropolis, Nigeria cut off the leg of their landlord in a disagreement which ensued over non-payment of rent. Incident of this nature is not peculiar to Nigeria alone, but also other developing countries battling with housing problem.

For instance, it was reported that a man from Bulawayo based in South Africa allegedly plunged to his death from the third floor window of his Yoeville flat in Johannesburg over a rent dispute after the landlord allegedly hired thugs to kill him. The tenant was said to have been involved in an altercation with the landlord over poor service delivery after electricity to his flat was disconnected despite him paying his rentals in full. Many cases of disturbance of quiet

enjoyment arise when the tenant is in arrears with his rents or resists unilateral rent increment.

b. Abrasive and Intolerant Landlord

A growing number of unscrupulous, oppressive and harsh landlords are using various foul means to force tenants to surrender possession. They consider the legal process to be slow, too expensive and therefore prefer eviction by force, to compel the tenant to abandon his tenancy.

Many landlords do not understand the intricacies of the law of tenancy, they rely more on the context of ‘absolute ownership’, that is the ‘lords’ who can do whatever they like with their real properties and, of course, by extension the tenants who they see as less equal to them. Most of such landlords believe that they are still in absolute control of the tenanted apartments, regardless that the law stipulates that upon the completion of tenancy arrangement, what is left for the landlord is reversionary interest which becomes operative at the expiration of the tenancy.

It appears that the legal maxim of ‘justice delayed is justice denied’ is more fundamental to the landlords than any group of persons, most of them can hardly go through the legal process, sometimes due to ego or pressing financial needs.

There are many cases of landlords, resorting to self-help to eject tenants in Nigeria, while some of those landlords are illiterates and might not understand the legal implications of their actions, others cannot be so classified. In most cases, the landlord starts with psychological and emotional attack on the tenants, some of the numerous, of which we have mentioned above. In another case, when a landlord was asked why he chose self-help rather than initiate court action against the tenant, he replied bluntly thus:

When my tenants do not pay rent and I want to get rid of them, if I go to court it takes time to get the cases on, and county court judges make terms, and it is very difficult to get rid of your tenants.

The court in *Emeshie v. Abiose* commenting on landlord’s use of self-help held that :

In a democracy like ours, the rule of law must triumph not only in our legal system but in our body politic. Parties in a litigation must accept the decision of the court in good fate; subject only to the appeal process available in law. No litigant can employ self-help to disrespect or disparage any court order. The Supreme Court and this court have times without number condemned self-help on the part of the litigations in matters in which court are seised. The case of Governor of Lagos State and another v. Chief Ojukwu (1986) 1 NWLR pt. 18, 61, is one on point. The appellant/applicant, a member of the honourable legal profession has taken the law into his hands, broke into a premises by which by a legitimate court order was not his and took over possession. This is a most unfortunate conduct, to say the least. I expected a legal practitioner to have some regard for the court where he practices his profession daily.

c. Denial of Landlord’s Title

It is presumed that at commencement of tenancy relationship between the landlord and the tenant, the latter recognizes the title and ownership of the former. However, one unusual area of conflict of interests between the parties is when a tenant denies or refuses to recognize the title of the landlord.

A tenancy is automatically terminated when the tenant denies, challenges or repudiates his landlord’s title. This type of misconduct is a ground for forfeiture in almost all systems of jurisprudence and all types of tenancy-term certain, periodic as well as customary tenancy.

However, it is important that the evidence of denial must be proved clearly. The best accepted form of evidence is alienation of the premises either by leasing (without the approval or confirmation of the landlord) or outright sale under a claim of ownership. The court in *Wisbech St. Mary Parish Council v. Lilley* states the principle underlying tenant’s denial of his landlord as follows:

If a tenant deliberately asserts a title in himself adverse to his landlord or if he lets a stranger into possession with the intention of enabling him to set up a title adverse to the landlord, that amounts to a repudiation of the landlord’s title;

and it would seem that where the tenancy in question is a yearly tenancy it is sufficient to constitute a repudiation if the assertion of title against the landlord is made orally.

4.1 Eviction

Eviction is an act or process of legally dispossessing a person of land or rental property. According to Collins, eviction means to expel a tenant from property by process of law or to recover property or the title to property by judicial process or by virtue of a superior title.

A landlord has an unfettered legal right to terminate a tenancy upon giving adequate notice. After all, the property belongs to him and he can at any time retrieve it subject to the conditions in the tenancy agreement. Once he abides by the provisions of the tenancy agreement, the tenant has no choice than to vacate possession. The position of the law is as straight and as simple as that. What constitutes notice is spelt out in the lease or tenancy agreement.

1. Notice to Quit.

The tenant is under an obligation to yield up possession of the demised premises at the end of the tenancy. A lease or tenancies for a fixed period is automatically determined at the end of the period. However, where the tenant fails to yield up possession after the expiration which is either expressly or impliedly renewed, the landlord reserves the right to issue notice to quit and serve same on the tenant.

Notice to quit is defined as a landlord's written notice demanding that a tenant surrender and vacate the leased property, thereby terminating the tenancy, or a landlord's notice to a tenant to pay any back rent within a specified period (often seven days) or else vacate the leased premises.

The origin of statutory notice to quit dates back to 1945 in Nigeria when the Recovery of Premises Act, no. 45 of 1945 was enacted. It provided for the length of notices required for the various periods of tenancies fixed by the parties. Section 8(10) of Recovery of Premises

Law recognizes the fact that the tenancy agreement is an important document which should first be examined in a bid to determine the mode and length of a valid notice to quit. It provides as follows:

Where there is no express stipulation as to the notice to be given by either party to determine the tenancy the following periods of time shall be given –

- (a) In the case of a tenancy at will or a weekly tenancy a week's notice;*
- (b) In the case of a monthly tenancy, a month's notice;*
- (c) In the case of a quarterly tenancy, a quarter's notice:*

Provided that in the case of a yearly tenancy the tenancy shall not expire before the time when any crops growing on the land, subject of the tenancy, would in the ordinary course be taken, gathered, or reaped within one year of planting and such planting was done by the tenant prior to the giving of notice.

The requirement of notice contained in the 1945 Rent Control Act was adopted by the defunct Eastern, Northern and Western Regions of Nigeria and later adopted by the states carved out from those regions. To validly terminate a tenancy, the landlord must strictly comply with the provisions of relevant laws on the issuance and services of notice to quit. The whole essence of notice to quit is simply a demand or call by the landlord on the tenant to yield up possession on or before a given date. Evershed J. capturing the whole idea of quit notice stated that:

The notice to quit, though in form only calling upon the tenant to do a particular act (namely, to vacate the premises), is beyond doubt intended upon its taking effect to put an end altogether to the relation of landlord and tenant. Though in terms such intention is not expressed, no one could for a moment be in doubt upon it. The intention must be read into the notice because that is its plain meaning. The tenant is called upon to 'quit' on the named date simply because his right to remain will then have ceased.

A fundamental feature of a notice to quit is that it must be in writing. Section 7 of Recovery of Premises Law provides inter-alia that such tenancy shall have been duly determined by a written notice to quit. It is our humble view that even where the tenancy is by parol, notice to quit should still be in writing since anything to the contrary would lend itself to abuse, and besides, this might be difficult to prove.

Generally, it is the law that notices to quit is a pre-action notice, which failure to properly issue and serve is fatal in any action instituted against the tenant. In *Pan Asian African Co. Ltd v. National Insurance Corporation (Nig.) Ltd.*, the respondents instituted an action, without service of notice to recover possession from the appellants which they held under an expired lease. On appeal to the Supreme Court, the court held that the respondents' failure to serve the statutory notice on the appellant was fatal to the action. Essentially, tenancy laws stipulate that such notice must be valid, to be effective.

Essentials of a valid Notice

- (i) The name of the landlord or his authorized agent.

Where an agent issues a notice of quit he should state clearly that he is acting as agent of the landlord. In *Bashuav. Odunsi* a notice to quit was declared invalid when it was evident that the landlord's son issued it and the notice made reference to the landlord.

- (ii) The tenant's name

It is important that the name of the tenant be inserted in the notice to quit since the tenant ordinarily is the addressee. The juristic name in which the tenant is known and can be sued, mere initials without more, or alias will not suffice for this purpose. Similarly, names of unregistered or unincorporated business enterprises and companies are unacceptable.

Even, where a subtenant or a tenant's surrogate occupies the premises, it is still necessary to insert the tenant's name in the notice.

- (iii) The nature of the Tenancy

The nature of the tenancy (whether monthly, quarterly, half-yearly, yearly or a tenancy at

will) should be inserted in the notice to quit as this helps in a way to determine, the validity of the notice, since in the absence of any agreement to the contrary, nature of tenancy determines the length of notice to be given.

In *Olaoya v. Mandilas*, Ames J. remarked that "notice of termination of a tenancy would be useless without proof of the nature of the tenancy as without this . . . a court cannot say if the notice of termination does lawfully terminate the tenancy.

It is significant to note that oftentimes, landlord ignored the length of notice as prescribed by the Recovery of Premises land and opted for the option as contained in their tenancy agreement. Even, though this is a valid option, but usually to the disadvantage of the tenant with an unfavourable tenancy agreement.

Description of the Premises

It is of great essence that the premises being the subject of the tenancy be described with a degree of certainty in the notice to quit. The description shall include the address and the location of the premises.

The date the tenant should quit and yield-up Possession.

The date of the commencement of the notice and the date of expiration are expected to be inserted in the tenancy; it has to be specific and not speculative. It is ideal and appropriate that the notice to quit be dated, however courts have held that failure to date a notice to quit is not fatal, what is fundamental is the date of service of such notice.

One major area of controversy and conflict between the landlords and tenants is the issuance (contents) and service of the notice to quit. There are instances where landlord or his agent backdate a notice in order to gain advantage. In the same vein, a tenant may also receive a notice to quit and deny receipt, which antics could be fatal to the success of either party in court.

The court in *Otegbade v. Adekoya* concluded thus :

A notice to quit must be clear and certain, so as to bind the party to whom it is given to act upon it, at the time it is given. The notice must not be ambiguous.

2. Court Proceedings

It is trite law that a landlord must issue and serve the tenant with a notice of his intention to proceed to court for an order to recover possession of the premises if within seven days of the service of the said notice on the tenant, he still fails, refused or neglected to yield up possession. This usually happens where after the expiration of the notice to quit the tenant still 'holds over' and refuse to yield possession.

The following issues should be put in perspective in commencing suit for recovery of premises against tenants:

- (a) Appropriate party should initiate the action, such person shall include the landlord, his agent or anyone so expressly authorized to do so by the landlord
- (b) The suit must be commenced against the appropriate party, that is, the tenant and sub-tenants.
- (c) The matter should be initiated at a court of competent jurisdiction. Recovery of Premises Law of various states in Nigeria and the Federal Capital Territory list such courts as: (i) Magistrates Courts (ii) High Courts and (iii) In some States, Recovery of Premises Court or Tribunal but not customary Court.
- (d) Court processes (summons or plaints or claims) should be served on the appropriate person, through the authorized person and in the appropriate mode specified by the law. The court has held that serving the court processes on the defendant (tenant) is a good service. Court also approve of substituted service (usually through the pasting on a conspicuous part of the premises) where the tenant is avoiding service of court processes or being inaccessible.

Section 19 of the Recovery of Premises Law summed up the adjudication process in tenancy matters as follows:

If the defendant shall not at the time named in the summons or any adjournment thereof show good cause to the contrary, then on proof-

- (i) *of the defendant still neglecting or refusing to deliver up the premises; and*
- (ii) *of the yearly rent of the premises; and*
- (iii) *of the holding; and*
- (iv) *of the expiration or other determination of the tenancy with the time and manner thereof; and*
- (v) *of the title of the landlord, if such title has accrued since the letting of the premises; and*
- (vi) *of the service of the summons; if the defendant does not appear thereto,*

The court may order as in Form J,K or L, whichever is applicable to the case, that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff either forthwith or on or before such day as the court shall think fit to specify.

However, the law provides for a situation where the plaintiff fails to prove his case to the satisfaction of the court, possibly due to failure to adduce weighty evidence or issuance of defective notices or for non-issuance of the stipulated notices.

Sub-section 2 provides that "if the plaintiff at the time named in the summons or at any adjournment thereof shall fail to obtain an order under subsection (1) the defendant shall be entitled to judgment and may be awarded costs, such judgment and award as in Form M.

Where a landlord is adjudged to be entitled to possession of any premises, the court may issue him with a "warrant of possession" even though a tenant's counterclaim is yet to be determined or satisfied. It is important to note that there are misconceptions regarding some technical terms which sometimes come up for adjudication and judicial interpretation. Due to high level of illiteracy in our society, both landlords and tenants usually have conflicting perspectives as to their rights and liabilities in eviction processes

leading to court's judgment. These issues are therefore put in the right perspectives later in this paper.

4.2 General Misconceptions

In landlord and tenancy matters, certain issues are largely misunderstood by the parties in particular and members of the public in general. These include: (i) whether the tenant should continue to pay rent after he has been served with a valid notice to quit? (ii) The position of waiver in landlord and tenant matters (iii) whether amounts to arrears of rent? (iv) What is mesne profit, and when should it be paid? (v) Adequacy of notice where a tenant is in arrears of rent (vi) whether notice to quit could be served on the tenant during the pendency of his tenancy.

These issues are examined below seriatim:

(i) In Nigeria, as in other developing nations, a notice to quit is the tenant's nightmare. Sometimes, in their desperation to keep their accommodations, some tenants continue to pay their rent even after the receipt of the notice to quit. The question is, what impact does this payment have on the notice to quit?

Where the tenant pays rent and the landlord collects after he had served notice to quit on the latter, the court held that it has the effect of renewal of tenancy.

Fitzgibbon L. J in *Lord Inchiquin v. Lyons* justified the position as follows:

I see no reason to think that the parties cannot, before the time named for quitting has arrived, agree that their existing relations shall continue uninterrupted . . . There is nothing unlawful in the parties to the contract of tenancy agreeing to withdraw a notice to quit; one of them who has served the notice may tell the other, or make the other to understand, that he has changed his mind, and thereupon the notice may be treated by both as abandoned . . . That result is attainable only by mutual consent, and is perhaps rightly described as . . . an arrangement to continue to hold under the old tenancy. . .

The position is however different when such payment is made after the expiration of notice or effluxion of term. Once a notice expires, the tenancy dies and cannot resurrected; the same goes for a term that has been effluxed. Denning J. confirmed this position when he held that:

In my position the law is now well settled that where a tenancy is determined by a notice to quit, it is not revived by anything short of a new tenancy and in order to create a new tenancy there must be an express or implied agreement to that effect . . .

The court puts this issue in perspective in *Clarke v. Grant*. In that case, after the expiry of a valid notice to quit, the tenants still in possession, one of them went to the landlord's agent and paid him a sum equivalent to a month's rent under the former tenancy. The agent took the rent in the mistaken belief that it was the rent in arrears in respect of the previous month. In fact the rent had always been paid in advance. The court of Appeal held that the notice to quit had not been waived.

(ii) Waiver.

Waiver arises where there is evidence that a party has actual knowledge that he has a right and he chooses not to exercise it. First, to constitute waiver, some distinct act ought to be done. The act must be intentional; the intention must be express or imputed by law-an intention to treat the matters as if the condition did not exist or as if the forfeiture or breach had not occurred.

It is also important that there is a proof that the person who is said to have waived his right had knowledge of the existence of the right or its infraction, while in the same vein; he must not be under legal disability that renders it difficult or impossible to exercise his right. It is very significant to state that the issue of "intention" or "motive" on one part of the parties is unsettled. Lord Denning MR's dictum appears to be a departure from the earlier principle of law. He stated thus:

So we have simply ask: was this rent demanded and accepted by the landlord's agent with

knowledge of the breach? It does not matter that they did not intend to waive. The very fact that they accepted the rent with the knowledge constitutes the waiver.

(iii) Arrears of rent

Lagos State Tenancy Law provides for the payment of payment of arrears of rent. Section 18 provides-

Where there is any matter for determination before a court under this Law, and the tenant admits the arrears of rent or a portion of the rent, the court may order the tenant to pay such arrears of rent while court proceeds with the matter.

Where arrears of rent are claimed for the use and occupation of the premises, the claim shall show the rate at which sum is claimed, and were it is proved, judgment shall be entered for the amount so proved.

Generally, in tenancy law and practice, rent are expected to be paid in advance and not in arrears. An arrears of rent accruing is an anomaly.

(iv) Mesne Profit

Mesne profits are rents and profits which a trespasser has or might have received or made during the occupation of the premises, and which therefore he must pay over to the true owner as compensation for tort which he has committed. A claim for rent is therefore liquidated, while a claim for mesne profit is always unliquidated.

Mesne profits are awarded for rents where the tenants remains in possession after the tenancy agreement has run out or been duly terminated. Consequently, besides the specific or liquidated sum claimed by the landlord, the court may award an additional amount which represents the rent for the period that the tenant remained in possession after the lapse or termination of the tenancy.

The word 'Mesne' was derived from the Latin word 'Mesne' meaning 'Meddle,' interviewing or intermediate from the date the tenant ought to

have given up possession and the date he actually gives up possession. Evidently, rent and mesne profits though erroneously used interchangeably, are not the same. Rent is liquidated, mesne profits are not. Rent is operative during the subsistence of the tenancy, while mesne profits start to run when the tenancy expires and the tenant holds over.

The court in *Abeke v. Odunsi* distinguished mesne profit from other terms such as 'rent' and 'damages' in the following words:

Mesne profit means intermediate profits – that is, profits accruing between two points of time that is between the date when the defendant ceased to hold the premises as a tenant and the date he gives up possession. As a result, the action for mesne profit, ordinarily does not lie unless either the landlord has recovered possession or the tenant's interest in the land has come to an end or the landlord's claim is joined with a claim for possession.

... One of the differences between mesne profits and damages for use and occupation is the date of commencement. While mesne profits begin to run from the date of service of the process for determining the tenancy, damages for use and occupation start to ascertain an amount which may constitute a reasonable satisfaction for the use and occupation of the premises held over by the tenant.

However, it appears that the Recovery of Premises Law and some of the judicial authorities are conflicting. A good example is the provision of Rent Control and Recovery of Residential Premises Law which is a departure from the common law definition. Section 40(1) thereof provided thus:

Mesne profits means the rents and profits which a tenant who holds over or a trespasser has or might have received during his occupation of the premises and which he is liable to pay as compensation to the person entitled to possession.

v. Adequacy of Notice where tenant is in arrears of Rent

This is common area of conflict between the landlord and tenant. Sometimes, not only the parties have misconception on this issue by also legal practitioners and Judges alike. Tenant being in arrears of rent simply means such a tenant is holding over after the expiration of his tenancy by effluxion of time.

The question here is, whether a tenant lose his right as to the length of notice he is legally entitled to, where he is in arrears of rent. Such a tenant at common law becomes a tenant at sufferance, but which our local statutes have not recognized. Previously, such tenancy could be determined by landlord's lawful act of forcible entry (known as distress). The court of Appeal denouncing this kind of practice declared that:

A landlord has not the right to invade premises in the lawful occupation of a tenant and cast his goods and belongings away even for safe keeping without his consent.

However, since the Supreme Court in *African Petroleum Ltd. v Owodunni* has declared that such tenancy "can only be determined either by the landlord's lawful act of forcible entry, where it is still possible, or by a proper action for ejection after due notices a prescribed by law", it is therefore our humble view that such tenant, should in the first instance be given one week notice to quit. Whereupon the expiration of this notice, he still fails, refuses and neglects to yield up possession, he should be served with the statutory seven days 'notice of landlord's intention to recover the premises.

In practice, given the socio-economic environment of Nigeria regarding high level poverty and sometimes social relationship between the landlords and their tenants, landlords usually give tenants who genuinely lost his source of income to continue with their tenancies for some time to source for the rent. The period of 'grace' given depends largely on the disposition of each landlord.

vi. Whether notice could be served on the tenant during the pendency of his tenancy?

The issue here appears elementary but unfortunate due to high level of illiteracy and

ignorance, it still remains largely controversial. Basically, since the parties, namely the landlord and the tenant know with a degree of certainty the length of notice required to determine the tenancy, what is material here is that the expiration of such notice must not fall within the currency of the tenancy. For example, where a yearly tenant's tenancy expires in the month of December 2014, it is a valid notice to quit where it commences from 1st June, 2014 and expires by 31st December, 2014. It is important that such notice must be served on the tenant not later than 1st June, 2014.

However, it is important that the service of such notice and other relevant notices must be effected in accordance with the stipulation of the relevant laws.

5. Conclusion

The law relating to landlord and tenant in Nigeria has become of increasing importance in recent years. This is largely due to some factors, which include: (i) Population growth (ii) Increase in economic activities (iii) Rural and Urban migration (iv) Acute shortage of housing and (v) Poverty.

The evolution of tenancy law started from the colonial era in Nigeria with the direct adaptation of English Law, which led to the enactment of some Nigerian Ordinances, such as Recovery of Premises Ordinance, Increase of Rent (Restriction) Ordinance, Increase of Rent (Restriction) (Application to Premises on Crown land) Order in Council and many others.

The trend continued in post-colonial Nigeria with successive governments enacting different tenancy laws, with the sole aim of regulating the incidence of tenancy relationships and possibly protects hapless tenants from landlords who set out to maximize profits on their premises.

Today, all the states in Nigeria and the Federal Capital Territory, Abuja have their respective tenancy laws, sometimes in the garb of 'Rent Control and Recovery of Residential Premises laws.' The impact of these laws are yet to be sufficiently felt, and this is evident from daily conflicts between landlords and tenants, which sometimes result in fatality. Landlords still fix

their rent with impunity, enforcing the law has proved difficult, even than the process of its enactments, the law does not meet the realities on ground in the modern day Nigeria. The unequal bargaining powers between the landlords and the tenants are frighteningly wide.

This area of law is fraught with too many technicalities which ought to be eliminated by constant reviewing of the extant laws to meet the socio-economic realities of the society. Unfortunately, the technicalities appear too entrenched to be reversed, while the doctrine of *stare-decisus* does not allow for constant judicial reviews of the old judgment of the Supreme Court.

Apparently, there is a disconnection between the law and realities in our society. Failure to understand the socio-economic factors that affect housing and rent impel a number of persons to propose wholly, legal remedies for this problem.

It is therefore our suggestion that factors, such as provision of housing units (under public and private partnership, or even a wholly government owned scheme), economic empowerment scheme (which will allow many homeless persons and tenants to own their individual homes), decongestion of the urban areas (by provision of infrastructural facilities and employment in the rural areas) among others should be put into consideration. All these factors and many others, when combined with holistic approach to the enforcement of tenancy laws will no doubt yield positive results.

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