

**THE LAWS GOVERNING THE LANDLORD AND TENANT
RELATIONSHIPS: ISSUES AND CHALLENGES**

By

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ABSTRACT

Property investment has always been one of the best investment vehicles to build a steady stream of passive rental income that can be extremely rewarding if managed correctly. There are two objectives for this study. The first objective is to identify the list of problems faced by both landlord and tenant in the residential sectors. The second objective for this study is to suggest possible ways in improving the laws that govern the landlord and tenant relationship. The data for this study are collected from articles, cases and interviews. These data collected were then analyzed. The findings of this study suggest that when it comes to the management of rental property, there is no doubt that rental is always the main issue. There are of course other issues which give problems to the landlords for example tenant disappearing act, causing damage to the property and using the rental property to carry out illegal activities. The same goes to the tenants whereby they may encounter landlords, who on purpose delay the refund of security deposits, produce unjustified claims, fail to carry out repair and maintenance of the rental property and fail to provide quiet possession of the rental property. These are the common examples of problems faced by the landlords and tenants.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Contents	iv
List of Statutes	vii

CHAPTER ONE: INTRODUCTION

1.1 Background	1
1.2 Research Question	2
1.3 Research Objective And Scope	3
1.4 Significance	4
1.5 Limitation	5
1.6 Methodology	5
1.7 Outline Of The Structure Of The Paper	6
1.8 Conclusion	8

CHAPTER TWO: TENANCY

2.1 Introduction	9
2.2 Tenancy	9
2.2.1 Type of tenancy	
2.2.1.1 Fixed term tenancy or tenancy for years	9
2.2.1.2 Periodic tenancy	10
2.2.1.3 Tenancy at will	11
2.2.1.4 Tenancy at sufferance	13
2.3 Purpose of tenancy	13
2.4 Definition of Landlord	13
2.5 The meaning of tenant	14
2.6 Definition of rent	14
2.7 Definition of tenancy agreement	15
2.8 Creation of tenancy	17
2.9 Landlord and tenant general obligation	18
2.10 Termination of tenancy	18
2.11 Standard tenancy practice procedures	19

CHAPTER 1: INTRODUCTION

1.1 Background

This research intends to take a closer look at the principles, rights and protections which provide the foundation of the landlord and tenant relationship. The dynamics of this relationship are shaped by law, diversity of social, political and also economic factors. Therefore, a study of the law alone does not give the complete picture of this relationship.

The landlord and the tenant relationship give rise to a lot of issues, especially their covenant for quiet enjoyment¹. For tenants, the tenancy is important not simply because it is a property asset but because of the particular and strategic significance of that asset, whether it be home or commercial base. In all sectors, security of tenure and affordable rents may be important to the tenants². However, the reasons why the security is important to him may differ. As for the retailer, it may be essential to the success of his business as security protects the goodwill built up over the years. For the home dweller, it provides shelter and protects him from the psychological attack, disruption and economic consequences of having to move. However, the tenants may also cause the problems for this relation such as late payment of the rent and this result in the landlords to suffer losses³.

Some views may suggest that the landlords make a lot of profit from the rented residents or non-residents area throughout the tenancy agreements and may be jeopardizing the rights of the tenants during the tenancy period such as failure to provide good management and safe condition for his premise as some landlords seek to observe good management practices, whether

¹Harvey M. Haber, *Tenant's Rights and Remedies in a Commercial Lease: A Practical Guide* (Aurora: Canada Law Books Inc, 1998) at 121.

²United Nations Human Settlements Programme in *Enhancing Urban Safety and Security: Global Report on Human Settlements 2007* (Earthscan, 2007) at 131

³A. Nor Aini Salleh, B. Nor' Aini Yusof, C. Abdul Ghani Salleh, and D. Noraini Johari in *Tenant Satisfaction in Public Housing and its Relationship with Rent Arrears: Majlis Bandaraya Ipoh, Perak, Malaysia* (International Journal of Trade, Economics and Finance, Vol.2, No.1, February, 2011 2010-023X)

for welfare purposes or commercial motives and others may be more ruthless in their treatment of tenants, as he seek to maximize profit and minimize management cost⁴.

Although the lease will generally be a source of wealth for the landlords from the tenants perspective, however there are also views that suggested that the landlords are always the victim as they suffered great losses in the case that if the tenant had disappear from the premise and left it in a bad condition while at the same time the tenants had default in payment of the rent⁵. Due to that the landlord need to cover the cost for the repair of his premise and sometime the deposit money is not enough to cover his losses⁶. Moreover, there are many problems which may arise in tenancy agreements. The problems can be in the form of excessive deposit payment require by the landlord, undue increase of rental by the landlord, process of recovery of the premise by the landlord and late or non-payment of the rent by the tenants.

Currently in Malaysia there are a few laws that govern such relations between the landlord and tenant. Namely they are the National Land Code 1965 and Contract Acts 1950 which provide loose guidelines. Meanwhile the remedies provided for such dispute are available in Distress Act 1951, Specific Relief Act 1950 and Civil Law Act 1956. Basically, the laws in Malaysia's are not specific in protecting or providing adequate rules and regulation regarding such tenancy agreements as the protection over the rights of the tenant and the landlord is scattered in the name acts⁷. This resulted in problematic tenancy agreements. Since there isn't an integrated statute that governs such relations, therefore it is hard for the parties in such relationship to determine the tenancy agreements code of conduct that should be followed⁸.

1.2 Research question

In Malaysia, there is no specific legislation regarding the relationships of landlords and tenants. Currently, they are governed by a few different statutes such as National Land

⁴KHAW TAN CHENG in OPPORTUNITIES OF TENANCY MANAGEMENT SERVICES BY FM ORGANISATION IN JOHOR BAHRU A project report submitted in partial fulfilment of the requirements for the award of the degree of Master of Science in Facilities Management Faculty of Geo information Science And Engineering Universiti Teknologi Malaysia NOVEMBER 2005

⁵Landlord Association in The Way Forward In Resolving Tenancy Disputes in Malaysia (HiSer CLUB 2009 © CHUR ASSOCIATES®)

⁶ibid

⁷Salleh Buang in Misplaced generosity (News Straits Time, 09/10/2004)

⁸ibid