

The Lagos Tenancy Law – Old Wine in New Skin

Introduction

The Lagos Tenancy Bill ('the Bill') was one of the most eagerly anticipated laws that was touted to put an end to excesses of shylock landlords, and relieve the burden of the helpless tenants. As tenants were rejoicing over the Bill, some landlords were designing ways of circumventing it. Finally, on August 25, 2011, the Bill was signed into the Lagos State Tenancy Law ("the Law"). Eight months after, the euphoria is dead, business is as usual, as if the Law was never passed.

The essence of this paper is to highlight some salient provisions of the Law and discuss its feasibility in the current Lagos State economic and social situations.

Some Salient Provisions

The Law is aimed at regulating the rights and obligations of landlords and tenants, and the procedure for the recovery of possession of properties by curbing the excesses of landlords who exploit tenants and the antics of tenants who refuse to fulfil their responsibilities.

The Law applies to all properties in Lagos State, whether commercial or residential, except residential properties: owned or operated by educational institutions for its staff or students; serving as emergency shelters; and those used for medical, rehabilitative or therapeutic treatment. The law does not also apply in Apapa, Ikeja GRA, Ikoyi and Victoria Island areas of the State.

and twelve months, in some cases, in advance for new tenants; and three months in advance for sitting tenants. The old law also provided for standard rents for different categories of accommodations.

Where the tenant is required to pay a collateral to cover damages, or for services and facilities for the premises, the landlord or his agent shall issue separate receipts to the tenants for such payments, and the tenants shall be entitled to a written account, at least every six (6) months, of how the monies were spent. Failure to issue receipts will attract a fine of N10,000.00. The law also abolished the usual agency and legal commissions, and provides that parties are to pay their agents and lawyers, where they engage any.

The law still maintains the length of notice to quit to be applied where no specific length is agreed upon in the tenancy agreement. The innovation in the Law is that the expiration of a notice to quit need not coincide with the anniversary of the tenancy, as has previously been the position; one clear month's notice is all that is now required in monthly tenancies. In yearly tenancies, notice to quit can be issued at anytime insofar as the tenancy runs its agreed course, which means such notice may terminate on or after the expiration of the tenancy. The notice can be served on any adult residing in the premises, or by pasting on the premises, or by courier, and such service shall be deemed personal, dispensing with the former requirement that

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The most anticipated part of the Law is the provision on advance payment of rent. The Law makes it unlawful for any landlord to collect more than one year's rent from new tenants, or more than six months' rent from a sitting tenant. Tenants are equally prohibited from paying such rent when demanded. If a landlord or tenant is convicted of either of these offences, he shall be liable to three months' imprisonment or a fine of N100,000.00. The Law prohibits unreasonable increase in the rent and a tenant may approach a court to determine the reasonableness of the rent where he believes that such increase is unreasonable.

However, the provision of the Law regarding advance rent is not new. A tenant should be more comfortable with the provisions of the Rent Control and Recovery of Residential Premises Law ('old law') on rent than the Law. The old law forbade the payment of rent in the excess of six months,

notices must be served only on the lawful tenant. This will prevent a situation where tenants evade service of quit notices. The law also accentuates fixed-tenancy whereby the landlord is only obliged to serve the tenant with only a seven (7) days' notice at the end of the tenancy.

Furthermore, any landlord who forcibly or illegally ejects tenants from the tenant's abode, shall be liable to six months' imprisonment or a fine of N250,000.00 upon conviction.

Some of the fundamental changes in the Law are: (a) it now applies to both residential and business premises; (b) it expanded the scope of personal service; (c) recognition of fixed tenancy; and (d) recommendation of Alternative Dispute Resolution for tenancy disputes.

Old Wine in New Skin

A good law must be enforceable. A law that cannot be effectively implemented is mere literature. The Law is replete with well-intended provisions that can scarcely be implemented due to the dynamics of economics. The Lagos State Government's attempt to control rent without controlling the demand or supply of accommodation would make the Law ineffective. A basic principle of economics is that the price of goods is a product of demand and supply i.e. the higher the demand, the higher the price and the lesser the supply, the higher the price. Therefore, for the price of goods to be effectively controlled by an entity, demand or supply must be controlled by same entity. The term 'price' connotes more than the monetary value placed on goods (or service), but means the entire consideration attached to the goods. With Lagos being a buyer's market for housing, the Government's attempt to control rent without controlling demand or supply of accommodation would surely have little or no impact.

Besides, the Law may ultimately cause more harm to the tenant than protect him. The trend with some landlords is to offer two sets of rent to a prospective tenant, of which the higher rent would be payable for one year and the lower for two years i.e. the prospective tenant is asked to pay the sum of N150,000.00 per annum or N200,000.00 for two years, thus, the prospective tenant is penalised for complying with the Law.

Prudently, the tenant will choose the two-year rent, as the present rent would be the basis for any future increase in rent.

Furthermore, the implementation of the provision on unreasonable increase in rent would be very difficult, as the major ground for such appeal is very subjective and varies. Tenants may exploit this provision to extend their stay in a property without paying rent, as they cannot be evicted pending the determination of the appeal. More so, since the Law does not control the rent, it can hardly control the increase.

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Generally, law plays a major role in determining the terms of a contract or regulating the conduct of the parties, as the wishes of the parties are to be expressed within the context of the law. As long as the parties find the contractual terms acceptable, the law will not interfere, but will in fact enforce the terms. This means that a landlord can let his property on whatever terms and to whoever he deems suitable within the confines of the law. These terms include rent, payment intervals, termination, etc. However, since it is recognised that the landlord is on a higher pedestal in a landlord/tenancy relationship, he can set the terms more in his favour; the law intervenes to create a balance.

However, the operation of market forces would militate against the effective implementation of the Law, leading to an artificial scarcity of accommodation, as some shylock landlords would refuse to let out their vacant properties until desperate prospective tenants offer to breach the law.

The Law repealed the old law, which applied wholly to Lagos State but restricted the effect of the Law to some localities; the question therefore is – which law applies to these localities? One may be tempted to say none, but this cannot be the intention of the lawmakers, as the law does not encourage a vacuum. Whichever law applies, those areas are back to the stone age of rent control and recovery of premises, and the parties are in confusion.

Conclusion

The logic in protecting the less-privileged by statutorily limiting the excesses of the privileged is laudable. But in doing so, there is need for proper foundation to be laid and potential leakages plugged, as landlords may perceive the statutory limitations as punishment, and take advantage of those leaks to mercilessly unleash their powers. The latest attempt to control rent can be likened to the Lagos State Government riding a chariot by patting the horses, while the landlords hold the reins.

Editor's Note

Corruption seems to have dominated all the news from all perspectives. The conviction and sentencing in Britain of a former Nigerian Governor for corruption in Britain, the sleaze generated by the probes in the National Assembly and the rot that what is left of the old pension scheme has become, have put the spotlight back on Criminal Justice Administration in Nigeria, leaving serious questions on if the present government has the political will to rout corruption in the country. Will foreign investors continue to feel comfortable to deal with Nigeria in the shadow of corruption if drastic actions are not taken?

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