

Landlord and Tenant

The term *landlord* refers to a person who owns property and allows another person to use it for a fee. The person using the property is called a tenant. The agreement between a landlord and a tenant is called a lease or rental agreement.

The landlord and tenant relationship has its roots in feudalism, a system of land use and ownership that flourished in Europe between the tenth and thirteenth centuries. Under feudalism land was owned and controlled by a military or political sovereign ruler. This ruler gave portions of land he or she owned to another person, called a lord. The lord, in turn, could allow another person, called a vassal, to use smaller portions of the lord's land. The vassal pledged allegiance and military or other service to the lord in exchange for the right to live and work on the land.

In 1066, the Normans of France conquered England, and William the Conqueror installed himself as king. King William used the feudal framework of land control to retain political power in faraway lands. Feudalism as a means of political control became obsolete by the fourteenth century, but the hierarchical system of land use and ownership remained.

The landlord and tenant relationship usually refers to a living arrangement. In this respect landlord and tenant law differs from the law regarding leases. In a landlord and tenant relationship, the parties are often referred to as lessor (landlord) and lessee (tenant). Indeed, a lease is a contract that creates the same relationship as exists between a landlord and tenant: the lessor owns property and allows the lessee to use it for a fee. However, the law of leases does not necessarily concern itself with living arrangements. A lease agreement may, for example, relate to the use of a good or service. Because living arrangements are vital to human existence, landlord and tenant relationships are treated differently from lease contracts.

Generally, a landlord and tenant relationship exists if (1) the property owner consents to occupancy of the premises; (2) the tenant acknowledges that the owner has title to the property and a future interest in the property; (3) the owner actually has title to the property; (4) the tenant receives a limited right to use the premises; (5) the owner transfers possession and control of the premises to the tenant; and (6) a contract to rent exists between the parties.

A rental contract may be implied under the law. That is, landlord and tenant law may apply even in the absence of a written and signed rental agreement between the owner of the property and the person living on the property. Whether a court will imply a relationship depends on the facts of the case. The court will look at a number of factors, including the owner's consent to occupancy of the property, the length of the occupancy, and the exchange of monies, goods, or services. A court's finding that a landlord and tenant relationship exists between two or more persons is significant because the law places duties on both parties in such a relationship.

Traditionally, landlord and tenant law was favorable to landlords. Courts resolved disputes between landlords and tenants according to strict contract and property principles, and tenants often were forced to pick up and move without notice or an opportunity to present an argument to a court. Also, landlords had no obligation to maintain the premises, and many tenants were forced to live in uninhabitable conditions. In the twentieth century, as urban populations increased and workers became more specialized, landlord and tenant law was forced to change. Typical tenants were no longer as handy at making repairs as were tenants in previous years. They worked long hours, they did not have the time to maintain premises, and building designs and utilities were more complex than before. These developments made maintenance a specialized task that could be carried out only by the landlord.

Status of tenant and landlord relationship in India

Introduction

At the very onset, in this context, the first requirement is that there be a premise that is being let out. The landlord or owner is someone who has acquired this immovable property either through inheritance or via purchase or gift. The landlord is the person or entity to whom rent is paid.

A tenant is the one who pays the rent to the landlord in exchange for occupying the property. The relationship between an owner and tenant in India is often thought of as contentious and antagonistic, but fundamentally it is driven by need.

No relationship starts with acrimony, and it is, therefore, paramount to set the covenants that will be followed by either party so that it is pleasant, fruitful, and economically remunerative, for a balance has to be struck, and the pendulum should not swing too far towards either party as the same person who is a landlord could also be a tenant in another city or another area in the same city or town.

A well-known UN study conducted in 1986 estimated that almost 42% of the city dwellers worldwide were tenants, with rapid urbanization that has ensued, especially in India and increasing migration from rural areas to cities for better prospects, this number would have seen a massive increase and a majority of these migrants are tenants although the data from the 2011 Census conducted in India across the top 6 metros indicated that 60% of the residents live in properties that they owned.

Emergence of the need for Rent Control and Statutes globally

Rent Control imposes a legal restriction as to what the maximum rent can be, or in other words, it caps the rent as seen fit under the rules set forth by the State.

During World War I, there was a severe shortfall of housing in New York as the resources required for construction had to be diverted for the wartime efforts; construction was stalled entirely during and after the First World War. Thus, no new inventory of housing was coming up. At the same time, the demand was unmet, and the house vacancy rates went to a nadir of a fraction of 1%, which sent rents

skyrocketing, and widespread protests ensued, accusing landlords of 'exploitative' practices, which led to the New York State Legislature passing a 'Rent Control Program' which would provide relief from baseless evictions and keep rents in check.

This program was strictly a wartime measure and expired in 1929 when the state of emergency was over. It established the concept of rent control and was revived during the Second World War, and exists even today in some form.

Emergence of Rent Control in India

In India, like the United States of America, the beginning of the call for rent controls can be traced to the First World War as inflation was surging, and tenants were in distress. The Rent Control Act, 1918 was passed in the Bombay Presidency in order to keep rents within reasonable limits, and a similar Act was also enacted in Kolkata in 1920. The Delhi Act was born in 1938 under the Defense of India Rules at the onset of the Second World War and was intended as a temporary measure given the extenuating circumstances.

However, what started as a temporary relief measure continued, and a Central Rent Control Act was passed in 1948 by Independent India and was carved out as an exception to the Transfer of Property Act, 1882.

Since the provision of housing is a State subject under the Indian Constitution, all states are therefore duty-bound to enact and enforce rent control as they see fit making it a quagmire for anyone trying to delve through the intricacies of the Acts passed by different State Legislatures of India.

The underlying principles of these enactments are:

1. Protection of the tenant from eviction by the landlord unless it is bona fide and under specific conditions as prescribed under the Act.
2. To set the fair or standard rent in order to prevent the Landlord from charging egregious rents.

For eviction under a contractual tenancy or lease agreement, as per Section 106 of the Transfer of Property Act, 1882, the Landlord can file a notice for possession from the tenant without giving any specific reason after giving a fifteen-day notice.

Under the Rent Control Act, a completely different set of standards are put forth, wherein a landlord can file for eviction:

1. Willful default in payment of rent.
2. Subletting without the consent of the landlord.
3. Breach of any conditions of tenancy like unlawful conduct or causing disturbance to other occupants of the building.
4. Denial of title by the tenant due to malicious intent.
5. The tenant is not occupying the building.

6. Landlord seeking possession for self with genuine reasons.
7. Eviction due to demolition or reconstruction needed due to the deteriorating condition of the building, after the reconstruction of the building, the landlord is free to use and enjoy its property with the only exception to this in Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 wherein the landlord must offer the tenant the first right to rent the reconstructed building at the then-prevailing fair market rents and only if the tenant chooses not to exercise his right can the landlord occupy or let out the building.

The Rent Control Act shall not apply in some instances, namely:

1. Property that is let out to Private Ltd. and Public Ltd. companies with a paid-up capital of Rs one crore or more.
2. Property let out to Government Companies or PSUs, Banks, or any such Corporation that has been established under any Central or State Act.
3. Property that is let out to Foreign Companies or International Agencies.
4. A few States have also exempted Temples, Charitable Trusts and Wakfs.

The concept of Rent Control is rooted in socialism, and it hugely favors the tenants.

No Free Market

Rent control destroys the economics of free markets as it interferes with the market dynamics of demand and supply, thereby preventing proper price discovery.

Any long-term distortion of rents is rather counterproductive as it destroys any incentive for anyone to consider building houses for rental housing, thereby exacerbating the very problem it has been created to solve.

Artificially capped rents also adversely impact Municipal Revenues as property taxes are closely linked to rents.

Antecedent Check

Given the difficulty involved in taking the corrective steps, it is prudent to ensure that the landlord does his due diligence on the background of the tenant before letting out the property:

1. Identity check, which will include Know your Customer (KYC) documents;
2. CREDIT score check, to verify past patterns of financial behavior;
3. Bank statement showing salary's credit with salary slip or letter on employer's letterhead or copy of ITR for the past two years.
4. Police verification is compulsory and a preventive measure whereby the district police maintain a record of the people who have migrated to different cities from their native places to pursue studies, businesses, jobs, etc. This verification's primary intent is to keep track of criminals and antisocial elements of society.

Fair Rent, not so Fair

Before we look into the statute for determining the fair rent, it is vital that the landlord sets a realistic rent after taking into account the rents that other comparable properties in the neighborhood are fetching. Another metric that can be a helpful indicator is rental yields which tend to be in the 2-3% range of residential properties.

Let's now look at an instance of how the legislation promulgated arrived at a fair rent. The Bombay Rent Act of 1948, for instance, defined the fair rent for a private building as the rent at which the premises were let on September 1, 1940.

Also, the rent control statutes in India do not recognize sub-tenants and licensees to estimate fair rent. The Act operates as 'in rem' and not 'in personam.' The fair rent determined in respect of a building is therefore influenced only by its capital value.

This process is somewhat capricious and almost always favors the tenant even though the landlord can also approach the rent controller for fixation of the rent.

Is arbitration allowed under the Rent Control Act

No, the disputes under 'Special' Rent Control Acts are not arbitrable as held by the Hon'ble Supreme Court Judgement in Vidya Drolia & Ors. v. Durga Trading Corporation – II that laid out the criteria on which arbitrability of disputes shall be decided. The court held that only leased properties that are exempted under rent control provisions would be governed under the Transfer of Property Act's provisions and would be arbitrable.

Transition from rent control to model tenancy

The proposed Model Tenancy Act aims to establish a framework that will completely overhaul the rental market in the country.

Let's take a look at the provisions that have been proposed in the Draft Model Tenancy Act, 2020:

1. No building or premises can be rented without an agreement in writing on mutually agreed terms;
2. The Act shall apply to both residential and commercial tenancies;
3. It applies all over India;
4. Rent has to be fixed by mutual agreement between landlord and the tenant.
5. Will apply only prospectively, and the existing tenancies shall continue to be governed by existing rental laws of the States/UTs.
6. Provision for a fast-track quasi-judicial mechanism for adjudication of disputes.
7. Shall apply to all tenancies with no monetary threshold.
8. Agreement terms shall be binding upon successors of the landlord as well as the tenant for the remaining period as per the tenancy agreement.

9. Sub-letting is not allowed without the execution of a supplementary agreement between the landlord and the tenant.
10. If the tenancy term ends at the time when the area wherein the rented premises is located experiences any force majeure event, the landlord shall allow the tenant to continue occupancy for one month from the date of the cessation of such event on the same terms as that of the prevailing tenancy agreement.
11. Security deposit for residential buildings must not exceed two months rent, and in the case of non-residential establishments, it shall be as per the terms of tenancy agreement subject to a maximum cap of six-month rent. The security deposit shall be returned at the time of taking over vacant possession of the premises by the Landlord after adjusting for any dues.
12. Recovery of possession by the landlord on certain conditions.
13. If the tenant fails to vacate the property after the lease ends, the landlord is entitled to double the rent for the first two months and then four times the monthly rent thereafter.

Thus, it is expected that ensuing state tenancy laws based on the Draft Model Tenancy Act, 2020 will usher in a new paradigm to ensure transparency for landlords and tenants. The provisions of the Model Act highlight the importance of a rent agreement, executed between the parties on mutually agreed terms, thereby minimizing the possibility of disputes, and in case of any dispute, it can be quickly resolved through the dispute redressal mechanism as prescribed in the proposed legislation.