

## The Extent of the Existence of the Rights of a Tenant in Nigeria

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### *Abstract*

*The Law of Landlord and Tenant is principally derived from the law of contract and property law. The Common law which is the bedrock of these two areas of the law is founded on laissez faire: freedom to contract, to choose the person with whom to contract, to insert any terms in a contract and so on. The relationship of landlord and tenant clearly underscores the responsibilities of the landlord to the tenant and vice versa. The Landlord's obligations to the tenant are the tenant's rights and vice versa. This paper examines the extent of the existence of the rights of a tenant in Nigeria. In so doing, it looks at the key terms such as the landlord, tenant, rights of a tenant, and the extent of these rights. The paper also posits that the current legal framework is lopsided because it affords the tenant the least protection and concludes by stating that protecting the tenant has become imperative as the party with the weaker bargaining power in such contractual relationships.*

### 1. Introduction

The right to adequate housing is considered paramount and happens to be one of the economic, social and cultural rights guaranteed by a number of domestic and international Instruments. The enjoyment of this right and its accessibility in Nigeria falls short of the growing expectations of Nigerians.<sup>1</sup> This is because in

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<sup>1</sup> Emeke Chegwe, 'The Right to Housing in the Context of Nigerian Law and Human Rights Practice' in *AGORA International Journal of Juridical Sciences*, available at: <http://univagora.ro/jour/index.php/aijjs/article/viewFile/958/217>, accessed 11<sup>th</sup> May, 2016. In Nigeria, the right to

spite of the existence of these laws and regulations, tenants still suffer in the hands of unscrupulous landlords.

With the growing increase in population, there is a concurrent need for houses to accommodate the rising population. As a result, there has always been a corresponding need for individuals, corporations and governments to build and lease or rent houses to fill this void.<sup>2</sup> These houses could either be for residential or commercial purposes. This has brought the need to regulate the relationship between landlords and tenants so as to avoid arbitrary increments in rents, wrongful eviction and illegal holding over of premises.<sup>3</sup>

The Law of Landlord and Tenant<sup>4</sup> is largely derived from the law of contract and property law. The Common law which is the bedrock of these two areas of the law is founded on *laissez faire*: freedom to contract, to choose the person with whom to contract, to insert any terms in a contract, etc. This aspect of the common law is to the last degree unsatisfactory as it gives the tenant- most times the weaker of the two contracting parties- little

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housing is recognised in the 1999 Constitution and other laws enacted at other levels which affect housing. Chapter two of the 1999 Constitution on Fundamental Objectives and Directive Principles of State Policy provides, *inter alia*, that the State shall direct its policy towards ensuring that suitable and adequate shelter, suitable and adequate food, reasonable national minimum wage, old-age care and pensions, and unemployment and sickness benefits are provided for all citizens. See section 17. This is closely linked to the various provisions on Rent Control and Recovery of Residential Premises Laws and Edicts applicable in different states of the Federation which underscore the significance of the existence of this right to housing.

<sup>2</sup> Okoronkwo Ijeoma, "Recovery of Premises: An Assessment of Landlord/Tenant Law in Nigeria" available at: <<http://toyinsrunway.blogspot.com/2013/05/recovery-of-premises-assessment-of.html>> last accessed 30th January, 2015.

<sup>3</sup> *Ibid.*

<sup>4</sup> The relationship of Landlord and Tenant is an association between two individuals arising from an agreement by which one individual occupies the other's real property with permission, subject to a rental fee. For further reading see, Landlord and Tenant, available at: <http://legal-dictionary.thefreedictionary.com>, accessed on 12<sup>th</sup> February, 2015.

or no protection.<sup>5</sup> In the course of time however, some judges and, later parliament,<sup>6</sup> began to appreciate that unbridled freedom hurts the tenant. The need to protect tenants from abrasive landlords should therefore be foundational to the law of landlord and tenant.<sup>7</sup>

In Landlord-Tenant relationship, the tenant has a lot going for him now as the Legislature has somewhat continued to give him a soft landing on the skewed turf of his dealings with the Landlord. This was mainly achieved by several hurdles placed by the legislature on the Landlord's track to fulfilling his obligations in a tenancy agreement and procedure for recovery of possession from the Tenant. The right of the Tenant is further underscored by the outright prohibition of self-help by the Court as a means for recovery of possession. In *Ajibayo Akinkugbe v Ewulum Holdings Nigeria Ltd. & Anor*,<sup>8</sup> where the respondents were ejected from the premises by the appellant without lawful authority, the court per Aderemi, J.S.C stated that a landlord who resorts to self-help

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<sup>5</sup> Chianu, Emeka. *Law of Landlord and Tenant*, (2nd ed.) (Panaf Press 2010), p. 1.

<sup>6</sup> Each State in Nigeria has its own Recovery of Premises Law and Rent Control and Recovery of Residential Premises Law. Lagos State for example passed a new Tenancy Law in 2011 to regulate rights and obligations under tenancy agreements and the relationship between the landlord and the Tenant including the procedure for the recovery of premises and for connected purposes.

<sup>7</sup> Above, note 6.

<sup>8</sup> (2008) 12 NWLR (Pt.1098) 375 S.C. See also the case of *Ihenacho v Uzochukwu* [1997] 1 SCNJ 117 at 284 where the Supreme Court of Nigeria 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. The case of *Eloichin v Mbadiwe* (1986) ALL NLR at P. 13 & 21 is also instructive on this point. See also Obanya Victor O., 'Dotting the I's and crossing the T's in Landlord, Tenant Relationship: *Odutola v Papersack Nigeria Limited* in perspective, available at: <http://legallines.blogspot.com/2013/02/dotting-is-and-crossing-ts-in-landlord.html>, accessed 30<sup>th</sup> January, 2015.

in a bid to recover possession of the premises tenanted by him runs foul of the law and is thus liable in damages.

Even though the courts have in a plethora of cases ruled against landlords' resort to self-help, this has not stopped the practice and other illegal acts by Landlords.

Tenancy agreement is a legal document that defines the relationship between the landlord and the tenant. This formal definition of the landlord-tenant relationship clearly states the responsibilities of the landlord to the tenant and vice versa. It essentially states the landlord and tenant's rights concisely and without any ambiguity.

It could also be seen as a contract between a landlord and tenant that contains the terms and conditions of the rental which cannot be altered while in operation unless both parties agree.<sup>9</sup> The Landlord's obligations to the tenant are the tenant's rights and vice versa.<sup>10</sup> In *Javad v Aqil*<sup>11</sup> Nicholls, L.J., while reading the judgment of the court stated thus:

... a tenancy springs from a consensual arrangement between two parties: one person grants to another the right to possession of land for a lesser term than he, the grantor, has in the land. The extent of the right thus granted and accepted depends primarily upon the intention of the parties....

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<sup>9</sup> Ibrahim Tajudeen Akogun, Olatoye Ojo, 'The Consequences of Tenant Eviction in Ilorin, Nigeria: Estate Surveyors and Tenants' Perspectives' in *Journal of Research in Economics and International Finance* (JREIF), available at: <http://www.interesjournals.org/JREIF>, accessed 11 May, 2016.

<sup>10</sup> Daniel Dabara I., Ojo Olatoye, Augustina Okorie, "An Examination of the Tenancy Agreement as a Shield in Property Management in Nigeria" *International Journal of Business Administration* (2012)Vol. 3, available at: <http://www.sciedu.ca/journal/index.php/ijba/article/download/1474/725>, accessed on 30 January, 2015.

<sup>11</sup> (1991) 1 WLR, 1007.

This paper shall examine the extent of the existence of the rights of a tenant in Nigeria. This becomes necessary in order to ascertain whether these rights are absolute, qualified or could be forfeited under certain circumstances.

In adopting a doctrinal approach, the paper shall resort to books, statutes and case law which are considered relevant to the subject with a view to determining the extent of the rights of a tenant and how to ensure protection of same in a landlord-tenant relationship. The paper also posits that the tenant should be protected by a more comprehensive legal framework that reflects international best practices as the party with the weaker bargaining power in such contractual relationships.

## **2. Landlord and Tenant: Definition of Terms**

### **2.1 Who is a Tenant?**

Since the enactment of the Recovery of Premises Ordinance in 1945, one interpretation of tenant has been reproduced in almost all the Recovery of Premises Laws and the Rent Control and Recovery of Residential Premises Law.<sup>12</sup> A Tenant includes any person occupying premises, whether on payment of rent or otherwise, but does not include a person occupying premises under a *bona fide* claim to be the owner of the premises. This definition of a tenant received judicial blessing in the case of *Abeke v. Odunsi & Anor*.<sup>13</sup>

A tenant could also refer to somebody who rents a building, house, apartment, plot of land, or piece of property for a fixed period of time. This arrangement is usually under the terms and conditions of a tenancy agreement or a similar legal entitlement.<sup>14</sup>

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<sup>12</sup> Daniel Dabara I., Ojo Olatoye, Augustina Okorie, above note 10 at 57.

<sup>13</sup> (2013) LPELR-20640 (SC). See also Section 2, Recovery of Premises Act Cap 544 Laws of the Federation of Nigeria, 1990. See also the Interpretation section of most Rent Control Statutes.

<sup>14</sup> Daniel Dabara I., Ojo Olatoye, Augustina Okorie, above note 10.

In *Sobamowo v Federal Public Trustee*,<sup>15</sup> Lewis JSC (as he then was) posited that all that is required to qualify a person as a tenant are:

- (a) actual use of the premises,
- (b) which is lawful,
- (c) coupled with such degree of permanence as would amount to occupation.

It is immaterial, as in the above case, that the person who claims to be a tenant was not put there by the landowner; it is enough that the person the landowner put in possession in turn lawfully puts the third party in occupation.<sup>16</sup>

What we can garner from the foregoing is that a tenant is any person who comes into lawful possession/occupation of the premises. What this means is that all lawful occupiers are tenants because the occupier must have been put there by a landowner or a person expressly or impliedly authorized by a landowner.<sup>17</sup>

However, where a landlord expressly prohibits a tenant from subletting to another person and he goes ahead, a person so put in possession cannot be deemed to be a tenant within the contemplation of the law. It therefore means that such a person will be deemed a trespasser and an action can lie at the instance of the landlord against such a person for damages.

## 2.2 Who is a Landlord?

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<sup>15</sup> [1970] 1 All NLR 257.

<sup>16</sup> *Ibid.*, note at 58. This is usually the case where there is a clause in the tenancy agreement that permits (Landlord's consent) the tenant to assign, sublet and part with possession of the demised premises. See *Oduye v Nigerian Airways Ltd* [1987] 2 NWLR (pt. 55) 126 where the Court per Eso JSC insisted that when a person occupies premises lawfully he becomes a tenant whether he pays rent or not; the statute imposes a tenancy on the landowner against his will. See also *Sule v Nigerian Cotton Board* [1985] 2 NSCC 807.

<sup>17</sup> *Ibid.*

A landlord is a person or organization that owns a property (a building, house, apartment, or plot of land) that is rented to others (tenants). This arrangement is usually under the terms and conditions of a tenancy/lease agreement or a similar legal entitlement.<sup>18</sup> A Landlord could also mean a person entitled to immediate reversion of the premises. Such a description will include the attorney or agent of any such landlord or any person receiving (whether in his own right or as an attorney or agent) any rent from any person for the occupation of any accommodation in respect of which he claims a right to receive same.<sup>19</sup> Furthermore, the term ‘landlord’ refers to a person who owns property and allows another person to use it for a fee.<sup>20</sup>

We can safely conclude by saying that any individual who owns commercial or private property and agrees to rent or lease it to others can be considered a landlord.

### **3. Extent of the Existence of the Rights of a Tenant in Nigeria**

The Law permits parties to a Tenancy to create the terms of their relationship. What this means is that in exercise of their contractual rights, parties create their own ‘private law’ through the covenants.<sup>21</sup> Covenants are the rights and obligations in a tenancy agreement whether formal or informal. There are basically three types to wit: implied, express and usual covenants. Implied

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<sup>18</sup> Daniel Dabara I., Ojo Olatoye, Augustina Okorie, Above note 10.

<sup>19</sup> See section 2, Recovery of Premises Act Cap 544 Laws of the Federation of Nigeria 1990. See also section 47 of Lagos State Tenancy Law, 2011 which provides that a “Landlord” in relation to any premises means the person entitled to the immediate reversion of the premises or if the property is held in joint tenancy or tenancy in common, any of the persons entitled to the immediate reversion and includes – (a) the attorney, solicitor, agent or caretaker of any such landlord; (b) any person receiving (whether in his own right or as an attorney or agent) any rent from any person for the occupation of any premises in respect of which he claims a right to receive the same; or (c) a former landlord where the context so requires;

<sup>20</sup> Okoronkwo, above note 2.

<sup>21</sup> Chianu, above note 5 at 147.

covenants are those covenants that exist by virtue of the established contractual relationship between the parties. Example of such covenants include; quiet enjoyment of the demised premises by the tenant, covenant that the house will be fit for human habitation, covenant to pay rent, etc. Usual covenants in tenancies are those covenants that are commonly found in tenancy agreements. This is more often than not subject to the court's determination based on the facts of each case.<sup>22</sup> In some jurisdictions, what constitute usual covenants is provided by statute. Some of these covenants which are labelled usual covenants are often implied and may sometimes be expressly stated.<sup>23</sup> Express covenants on the other hand are those covenants in the agreement, the conditions or terms of which the parties have agreed upon as mutually binding on them. Once they are incorporated in the agreement, the parties are bound by them<sup>24</sup> and each party is entitled to remedies upon breach of any of the terms.

Just like landlords, tenants also have rights accruing to them by virtue of the relationship of landlord and tenant. Tenant's rights are the responsibilities or obligations of the landlord to the tenant. These are spelt out or sometimes implied in the tenancy agreement between the landlord and the tenant. That is why the Tenancy agreement is such an important document in the transaction between the landlord and the tenant.<sup>25</sup>

As soon as a valid lease is created, both the landlord and tenant will enjoy certain rights and be subject to obligations

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<sup>22</sup> Rosemond Phil-Othihiwa, 'Landlords Duty to put Property in Tenantable Condition, available at: <http://www.legalnaija.com/2016/02/landlords-duty-to-put-property-in.html?m=1>, accessed 24 November, 2016.

<sup>23</sup> Above note 22. See also the case of *Sweet & Maxwell Ltd. v Universal Services* (1964) 2 Q.B 699.

<sup>24</sup> Rosemond Phil-Othihiwa, above note 22.

<sup>25</sup> See, 'Tenant Rights Lagos Nigeria-Know Landlord Rights and Know Yours-Free Tips', available at: <http://www.lagos-nigeria-real-estate-advisor.com/tenant-rights.html>, accessed 12 February, 2015.



therefrom.<sup>26</sup> This paper is solely concerned with the rights of a tenant in the relationship because of the likelihood of abuse in the relationship as the weaker party.

It therefore becomes necessary at this juncture to discuss these rights of a tenant in Nigeria which shall be done under sub-heads for ease of understanding.

### 3.1 Right to Quiet Enjoyment

Traditionally, the only covenant/right implied in a tenant's favour is one for quiet possession or enjoyment.<sup>27</sup> The tenant is entitled to peacefully and quietly hold and enjoy the demised premises throughout the term without any interruption by the landlord or any person rightfully claiming under or in trust for the landlord<sup>28</sup> upon payment of rent and having performed all his obligations under the tenancy agreement. This covenant protects the tenant's possession against the disturbances of the landlord and successors in title,<sup>29</sup> non-derogation from grant and against unlawful eviction.<sup>30</sup> The covenant for quiet enjoyment is so fundamental that is implied even in parol letting and in mere tenancy agreements. Indeed, the mere creation of a landlord and tenant relationship is sufficient to import a provision for quiet

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<sup>26</sup> Uche Jack Osimiri, *Modern Law of Landlord and Tenant in Nigeria* (Pam Unique Publishing Company Limited 2004), p. 171.

<sup>27</sup> Chianu, above note 5 at 231. See also the case of *Hampshire v. Wickens* (1878) 7 Ch D 555, 561.

<sup>28</sup> See note 26 above.

<sup>29</sup> See the case of *Hilda v Makanjuola* (1978) OGSLR 2099 where the landlord ordered the carpenter to deroof the house in possession of the tenant and the court per Delano J. held that the only lawful method of recovering possession was through the due process of law by the order of court. The court was emphatic that the landlord's action in authorising the removal of the roof of his house while the tenant was in lawful occupation was an act of trespass.

<sup>30</sup> Uche Jack Osimiri, above note 26 at 172. See also *Praying Band of Cherubim & Seraphim Church v Udokwu* (1991) 3 NWLR (Pt.182) 716 at 723 and 735-736.

enjoyment.<sup>31</sup> It is interesting to note that this implied covenant/right has received statutory backing. For instance, section 6(1) of the Lagos State Tenancy Law, 2011 provides that the tenant's entitlement to quiet and peaceable enjoyment of the premises includes the right to privacy, freedom from unreasonable disturbance, exclusive possession of the premises, subject to the landlord's restricted right to inspection and the use of common areas for reasonable and lawful purpose.

The foregoing provision is considered laudable and a shield for tenants because it expressly covers what the right to quiet and peaceable enjoyment of the premises entails.

Whenever the landlord is in breach of this right, the tenant can amongst other things successfully bring an action in trespass,<sup>32</sup> nuisance and seek damages<sup>33</sup> against the landlord.

### 3.2 Implied Right to Fitness for Human Habitation

In the absence of an express covenant requiring the landlord to effect repairs, the landlord is not bound to make repairs as the rule is "caveat lessee". This connotes that the tenant is expected to inspect the premises and decide whether to go ahead with the tenancy agreement or not.<sup>34</sup> In practice however, there is the implied covenant obligation on the landlord to ensure that the demised premises is fit for the tenant's habitation.<sup>35</sup> This involves

<sup>31</sup> Chianu, Emeka. (above note 5) at 231. See also *Budd-Scott v. Daniell* [1902] 2 KB 351, 355-6. See also *Fasoro v. Abdallah* [1987] 2 NSCC 857 where landlord's use of adjoining premises to harbor prostitutes was said to constitute breach of quiet enjoyment.

<sup>32</sup> *Chukwumah v Shell Petroleum Devt Co of Nig Ltd* [1993] 4 NWLR (Pt. 289) 512.

<sup>33</sup> *Oluwole v Abubakare* [2004] 10 NWLR (Pt 882) 549 where the Court held that the law is that where a party seeks special damages, he must prove it dutifully.

<sup>34</sup> Rosemond Phil-Othihiwa, (n 22)

<sup>35</sup> Uche Jack Osimiri, above note 26 at 182. *Seven-Up Bottling Company v Mr. Olumuyiwa Peter Akinware* (2011) LPELR-CA/AR/10/2010, *Unilife Development Co. Ltd v. Mr. Kolu Adeshighbin & Ors* (2001) 4 NWLR (Pt.

carrying out structural repairs of main parts of the house such as the main walls, roofs, sewage system, etc. while the tenant is obliged to effect minor repairs e.g. floors, painting, etc. This is often not the case as some landlords will resort to making superficial repairs which end up endangering the lives/health of the tenants and also making them incur additional costs.

In order to ensure strict compliance with this covenant, the paper posits that considering how crucial this particular covenant is, it should be clearly stated (express covenant) in the tenancy agreement. This will protect the tenant and make him entitled to damages or specific performance in the event of a breach.

### 3.3 Right to Reasonable Use of the Premises

The right to reasonable use of premises is a corollary to a tenant's right to quiet enjoyment of the demised premises. In the absence of any express restraining clause, a tenant is at liberty to use the premises for any and all purposes subject to such restrictions as the private law of nuisance, and public health law which government officials enforce.<sup>36</sup>

What we can deduce from the above is that a landlord cannot substantially interfere with the tenant's reasonable use of the premises except there is an express restrictive covenant against user. As to whether actions by the landlord constitute interference/disturbance will depend on the facts of the case to avail the tenant of damages, a restraining order (injunction) or other remedies.

### 3.4 Right to Claim Compensation for Effected Improvements

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<sup>36</sup> 704) 609 and *Alhaji Usman Dantata & Anor v. Mouktar Mohammed* (2000) 5 ILAW/SC.SC.105/1997, cited in Rosemond Phil-Othihiwa, above note 22. Above note 32 at 196. See *Lewin v American and Colonial Distributors Ltd* [1945] CH. 225, *Vee Gee (Nig) Ltd v Contact (Overseas) Ltd* [1992] 9 NWLR (pt 266) 503. See also section 8(iv) of the Lagos State Tenancy Law, 2011.

A tenant with the prior consent of the landlord in writing can effect improvements on the premises. Upon determination of the tenancy, he is entitled to claim compensation for the effected improvements.<sup>37</sup>

Improvement is anything a tenant does which adds to the rental value of the premises. While a tenant is at liberty to remove his fixtures at the end of tenure, it may not give him all the comfort he needs because some improvements such as plastering, tiling or painting cannot be removed.<sup>38</sup> The need to expressly state in the tenancy agreement that the tenant has the right to be compensated for improvements upon determination of the tenancy can therefore not be overemphasized for the purposes of enforceability.

### **3.5 Insurance of the Demised Premises**

In long leases, it is customary to provide express covenant for insurance against losses and damages to the demised premises caused by fire and other risks.<sup>39</sup>

It is the landlord's duty to insure the demised premises which undoubtedly becomes a right of the tenant. Insurance is not a covenant that can be implied against a tenant. It is now standard practice for landlords to insert a clause which obligates a tenant to pay an additional sum to cover the landlord's insurance of the premises.<sup>40</sup>

Where this responsibility is however expressly placed on the tenant, he is to insure and pay premium for the full value of the property with a reputable insurance company or one approved by the landlord sometimes in the joint names of the tenant and landlord.<sup>41</sup>

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<sup>37</sup> See section 6(2) of the Lagos State Tenancy Law, 2011. See also *Cole v. Begho* (1959) 4 FSC 75.

<sup>38</sup> See *Morcom v. Campbell-Johnson* [1956] 1 QB 106, 122.

<sup>39</sup> Uche Jack Osimiri, above note 26 at 274.

<sup>40</sup> Chianu, Emeka, above note 5 at 265.

<sup>41</sup> Above note 39 at 274.

Unless there is an express covenant in the tenancy agreement that obligates a tenant to pay an extra sum for the insurance (insurance rent), the tenant cannot be held liable to reinstate the property in the event of an accident or other occurrences.

A tenant's action to have the insurance money applied to reinstate the building will succeed notwithstanding that the incidence that led to the loss is accidental or arose from his negligence. And once a landlord is indemnified, he cannot maintain a separate action against his tenant who has paid insurance rent.<sup>42</sup>

### 3.6 Right to Notice

A tenant is entitled to be notified of the landlord's intention to enter the demised premises for the purpose of effecting repairs, inspection or vacating the premises where he intends to lease to another tenant. We can most importantly say that a tenant has the right to be notified of the Landlord's intention to recover premises as stipulated by the law.

The Recovery of Premises Laws<sup>43</sup> has been enacted in various States of Nigeria principally to provide procedures a landlord must adopt to recover possession. Such procedures are primarily to protect the interest of the tenant against that of the

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<sup>42</sup> Above note 39 at 266. See also *Mark Rowlands Ltd v Berni Inns Ltd* [1986] 1 QB 211.

<sup>43</sup> The position of the Law with respect to notices is that a landlord seeking to recover premises before the determination of the tenancy by effluxion of time must issue a notice to quit. See section 8 of Recovery of Premises Act, Cap 544, LFN 1990 and section 13(1) of the Lagos State Tenancy Law, 2011. This is usually followed by a seven days notice of owner's intention to recover premises. See section 15(2)(a) of the Tenancy Law, 2011 and section 13 of the Rent Control and Recovery of Residential Premises Law of Lagos State, 2003

landlord.<sup>44</sup> Coussey, J.C.A. observed in the case of *Okedare v Hamid*<sup>45</sup> 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.

It is important to point out that before the procedure laid down in the Recovery of Premises Laws can be invoked, two factual conditions must be satisfied: there must be in existence some “premises”<sup>46</sup> as defined by law; and the landlord-tenant relationship must be established. However, in *Ihenacho’s* case,<sup>47</sup> it was held that the landlord must still comply with the procedure laid down in the law even if there is no landlord-tenant relationship; provided the person sought to be evicted is in lawful occupation.<sup>48</sup>

There are basically two types of notice namely; notice to quit and notice of intention to recover premises which shall be discussed seriatim.

#### **(a) Notice to quit**

The most widely known mode of terminating a periodic tenancy is by service of a notice to quit. A notice to quit calls on the opposite party to vacate premises and this can only issue from the landlord.<sup>49</sup> It also gives the landlord the unfettered right to reclaim the premises once he has complied with the provisions of the law

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<sup>44</sup> Okoronkwo, above note 2.

<sup>45</sup> (1955) 15 WACA 17 at 19.

<sup>46</sup> See section 36 of the Rent Control and Recovery of Residential Premises Law of Lagos State, 2003 defines premises to include, “a house or building or any part thereof together with its gardens or other appurtenances”

<sup>47</sup> *supra*.

<sup>48</sup> Chianu, above note 5 at 265.

<sup>49</sup> Chianu, above note 5 at 290.

as was held in *Mrs Olayinka Adewunmi & Ors. v. Mr Amos Oketade*.<sup>50</sup> A landlord seeking to recover possession of his premises before the expiration of the tenancy (effluxion of time) is obliged to issue a notice to quit<sup>51</sup> which must be in writing. In *Otegbade v Adekoya*,<sup>52</sup> the Court upheld a notice to quit which took the form of a letter. The notice stipulates a period within which the tenant must quit possession of the premises.<sup>53</sup> The period of notice given will usually depend on the agreement between the parties. In the absence of any agreement, the period of notice will be determined by statute.<sup>54</sup> For instance, section 8 of Recovery of Premises Act<sup>55</sup> provides that in the absence of an express agreement to the contrary, the period of notice to be given by either party shall be as follows:

- Tenancy at will or weekly tenancy – a week's notice
- Monthly tenancy- a month's notice
- Quarterly tenancy- a quarter's notice
- Yearly tenancy- half a year's notice.

#### **(b) Notice of owner's intention to recover possession**

The Recovery of Premises Laws as well as the Rent Control and Recovery of Residential Premises Laws of the various States in the

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<sup>50</sup> (2010) LPELR-163(SC). The Supreme Court per Niki Tobi, JSC (as he then was) stated thus: "A landlord has an unfettered legal right to terminate a tenancy upon giving adequate notice. After all, the property is his and he can at any time retrieve it subject to the conditions in the 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 very clear. It is almost like the day and the night changing places"

<sup>51</sup> A valid notice to quit must contain the name of the landlord or his authorized agent, tenant's name, nature of tenancy, the date the tenant should quit and deliver up possession, etc.

<sup>52</sup> [1962] 2 ALL NLR (pt 1) 52.

<sup>53</sup> Okoronkwo, above note 5.

<sup>54</sup> Above note 53.

<sup>55</sup> Cap 544, LFN (Abuja) 1990. See section 13(1) of Lagos State Tenancy Law, 2011 for similar provisions.

Federation equally make provisions for the service on tenants of a notice of the Landlord's intention to proceed to court to recover possession.<sup>56</sup> For instance, the Lagos Tenancy Law<sup>57</sup> provides thus:

As soon as the term or interest on any premises has been determined by a written notice to quit as in Form TL2 or TL3, in the Schedule to this Law and the tenant neglects or refuses to quit and deliver up possession of the premises or any part of it, the Landlord or his agent may cause the tenant to as soon as the term or interest on any premises has been determined by a notice to quit be served with a written notice as in Form TL4, signed by the Landlord or his agent, of the landlord's intention to proceed to recover possession, stating the grounds and particulars of the claim, on a date not less than seven (7) days from the date of the notice.

On the expiration of the notice to quit or the determination of the interest of the tenant, if the tenant or any person actually in possession of the premises or any part thereof neglects or refuses to quit and deliver up possession of the premises, the landlord or his agent may cause the written notice of the owner's intention to proceed to recover possession to be served on the tenant.<sup>58</sup> The date must not be less than 7 days.<sup>59</sup> In calculating the 7 days, it must be 7 clear days; the day of service must be excluded and the day of expiry must be included. In *Ezeama v Ejidike*<sup>60</sup> a two-day notice was held ineffectual even though the summons was not applied for until after seven days had elapsed.

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<sup>56</sup> Chianu, above note 5 at 372. This notice is also known as 7 days notice.

<sup>57</sup> 2011.

<sup>58</sup> Okoronkwo, above note 2.

<sup>59</sup> See section 13 of the Rent Control and Recovery of Residential Premises Law of Lagos State, 2003.

<sup>60</sup> (1962) 6 ERLR 185.



The notice of intention cannot be issued and served before the expiry of the notice to quit or effluxion of time. Hence, the reference to the landlord as owner underscores the determination of the tenancy and the cessation of a landlord-tenant relationship.<sup>61</sup>

In the event of an unlawful eviction, the landlord could be sued and liable in damages.<sup>62</sup> With respect to unlawful entry without the consent of the tenant, he could be liable for trespass, nuisance, etc.

In the absence of any provision to the contrary, the landlord is obliged to pay all rates and charges as stipulated by the law. He also owes a duty to the tenant not to seize or interfere with the tenant's access to his private property/belongings.<sup>63</sup>

It is important to point out that the foregoing covenants or rights of a tenant are not exhaustive as the parties can by agreement insert more terms which will be binding on them.

#### **4.0 Limitations of the Rights of a Tenant**

Having examined the rights of a tenant, it becomes apposite to state at this point that there is however an extent to the existence of the aforementioned rights of a tenant. This means that these rights are not absolute and could be forfeited under certain conditions. Where a tenant fails to observe any of his obligations/duties<sup>64</sup> or upon breach of any covenant in a tenancy/lease agreement whether implied or express such as non-payment of rent, rates, taxes and

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<sup>61</sup> Chianu Emeka, above note 5 at 372.

<sup>62</sup> See *Ihenacho v. Uzochukwu* (supra)

<sup>63</sup> See generally section 7 of the Tenancy Laws of Lagos State, 2011 for the Landlord's covenants.

<sup>64</sup> Under a tenancy agreement, a tenant covenants to pay rent, rates, taxes and outgoings, to keep the premises in tenantable condition, to permit the landlord or his agent to enter the premises for the purposes of carrying out inspection or repairs, not to make any alterations without the consent of the landlord, not to sublet, assign or part with possession without the consent of the landlord, etc. See section 7 of the Lagos State Tenancy Law, 2011.

outgoings, denial of the landlord's title, covenant not to assign, sublet or part with possession, etc.,<sup>65</sup> the landlord can determine the tenancy by exercising his right to forfeit the residue of the term. What this means is that in the event of any breach of covenant on the part of the tenant, a landlord could successfully invoke a re-entry or forfeiture clause in the tenancy agreement for a term certain or sue for breach of covenant and claim damages or serve him a notice to quit where it is a periodic tenancy.<sup>66</sup>

As soon as forfeiture is incurred, the tenancy is determined as the landlord is entitled to re-enter.<sup>67</sup> In some cases, prior notice must be given by the landlord to the tenant before exercising his right of forfeiture.<sup>68</sup> This was the decision of the court, per Egbuna J. in *Ibeziakor v Chinekwe*.<sup>69</sup> Also in *Koya v. Babalaye*,<sup>70</sup> it was held that since there was no evidence that the oral lease between parties contained a proviso for re-entry, there is no such right for the landlord to exercise and if the Landlord is desirous of terminating the tenancy, he should serve the tenant with the stipulated notice.

The foregoing shows that the landlord must expressly reserve the right to re-enter for breach of any one or more of the covenants in the lease as this right can never be implied in a lease.<sup>71</sup>

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<sup>65</sup> Uche Jack Osimiri, above note 26 at 153.

<sup>66</sup> See *Motaya v Nigeria Fibre Industries Co Ltd* (1974) 4 ECSLR. For definition of forfeiture and re-entry by the landlord, see the case of *Airtel Networks Limited v. Mrs Patricia Bosede George & Ors* (2014) LPELR-22951(CA)

<sup>67</sup> Above, note 65.

<sup>68</sup> Chianu Emeka, above note 5.

<sup>69</sup> (1972) 2 ECSLR (pt. 1) 71 at 75.

<sup>70</sup> (1980) 2 OYSHC (Pt. 1) 342 at 352-3.

<sup>71</sup> Uche Jack Osimiri, above note 26 at 345. See also *Nwajide v Ossai* (1972) 2 ECSLR 576.

It is important to note that the issue of forfeiture does not arise where the lease has expired by effluxion of time and this was upheld in the case of *Oduye v Nigerian Airways*<sup>72</sup>

The law of landlord and tenant is such that regulates the relationship of the parties, their rights and obligations towards each other the breach of which entitles each party to remedies under the law.

In order to ensure protection of the rights of the tenant, it is important that all the covenants that are meant to be express are properly captured in such tenancy agreements with the rights and obligations of each party clearly spelt out. The remedies available to each party in event of breach should likewise be incorporated in such agreements to avoid ambiguities.

## 5. Conclusion

This paper can be aptly concluded by stating that although the rights and liabilities of tenants to their landlord are based on private contractual terms, clearly protecting the tenant has become imperative as the party with the weaker bargaining power. It therefore becomes necessary to review the current legal regime and develop housing policies/regulations that will further protect the rights of tenants in Nigeria and control the excesses of unscrupulous landlords. This will go a long way in preventing arbitrary increments in rents, unlawful trespass, unlawful sale of the demised premises, wrongful eviction and illegal holding over of premises. However, it is important to note that the protection does not rob the landlord of his rights but tries to create appropriate balance. Hence, the rights afforded the tenant are not absolute but promote a semblance of equality.

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*Supra.*