KB LAW SCHOLARS JOURNAL
http://www.kblsp.org.ng/
No. 2 The Laurels Dun An Oir Kanturk Co. Cork Republic of Ireland
Greenbelt Rd Lanham Md. 20706, Maryland, US
Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

1. Introduction

The law that protects and regulates the interest of landlord and tenant should be of monumental attraction to everyone in every modern society, whether they are solicitors or not, save and except some hooligans or vagrants who live under the bridges. There is an assumption that everyone lives in a home which is either the personal property or it is let to him by someone. Thus, everyone is either a landlord or a tenant.

Ignorance of the law of landlord and tenant has caused a lot of hardship and sorrow to either of the parties. The landlord has to know the terms he must include in a tenancy agreement to protect this interest else, if anything untoward happens to the property he will be left in the limbo, if this is the only source of livelihood, it could bring about his ruin. The tenant should also be well abreast with the limit of his rights and obligations, hence he finds that after he had invested so much money on the property, for example altering it to suit his taste or need, he is evicted from it. Both need to know not only the express terms of their agreement but also some presumed or implied covenants which bind them equally.

2. Conceptual clarification and Research Data

A landlord is any person who holds land or premises that are let to another person. He is a person who has granted a lease or tenancy to another. He may be a natural person or an artificial person such as a company or an agency of government. As defined under the Recovery Statues, a landlord is any person who, in relation to any premises, is entitled to the immediate reversion of such premises[1]. The courts have also given approval to this definition in a number of decisions[2] and, by the statutory definition, a landlord includes:

a. Any person entitled to the immediate reversion under a joint tenancy or a tenancy in common;
b. The attorney or agent of the landlord as defined above;

c. Any person who receives rent in respect of the premises under a right to receive same from any person who is in occupation thereof.

By the provision of section 40 of the Rent Control and Recovery of Residential Premises Edict No. 9 of 1976 of Lagos State (as amended) a landlord, in relation to a premises, is 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 the attorney or agent of any such landlord.

> The ordinary and grammatical meaning of the expression "the person entitled to the immediate reversion" used in Sec. 40 (1) aforesaid in the definition of

[1] A reversion is an interest in premises or laid which a person (known as the reversioner) who has let part of his whole interest in his land or premises to another to retain in the land or premises.
[2] For instance, the Court of Appeal in Erhunmwunsei v Ehanire (1998) 10 NWLR (Pt. 568) 55; and Coker v Adetayo (1992) 6 NWLR (Pt. 249) 613

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

> "Landlord" they are "Statutory Landlords," in other words they consent to the situation —Landlords of tenants they do not want.[3]

A tenant is any person, whether natural or artificial, who is in lawful occupation of premises belonging to another person known as the landlord. He is the person defined under Recovery Statues as any person, including a subtenant, who is occupying an' premises whether on payment of rent or otherwise.

By this statutory definition, if the occupation is under a *bona fide* claim of right as the owner of the premises, then such a person is not a tenant. Accordingly, a tenant is any person, not being the owner, who is in lawful occupation of premises belonging to a landlord whether the tenant is paying rent in respect of the occupation or not. The lawful occupation includes ones permitted under a contract between the landlord and the tenant and one which continues after the expiration of the contractual tenancy in which case the tenant becomes what the law calls a statutory tenant.[4]

By virtue of Section 40 (1) of the Rent Control and Recovery of Residential Premises Edict No. 9 of 1976, as amended, a tenant includes a sub-tenant or any person occupying any 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. The phrase "unless the context otherwise requires" as used in section 400) does not mean that the definition of "tenant" in that sub-section applies only where the context so requires, hut that where a person occupies a premises, he is a tenant except the context denotes to the contrary.[5]

The expression "tenant" as defined by the Rent Control and Recovery of Residential Premises Laws of Lagos State is wide enough to include a person who enters into possession upon the permission of the original tenant, and who stays over after expiration of such tenancy and thus becomes a statutory tenant.[6] 'And so it is. In the case of *Sobamowo v Federal Republic Trustees*,[7] the tenant allowed a third party to use his room jointly for storage of goods and he was given keys when the tenant vacated the premises. The Supreme Court of Nigeria held that he was a tenant enjoying joint possession and that all that was necessary was lawful occupation. A person who is not a tenant under the original tenancy agreement but who assumes possession by the permission of the original tenant and holds over cannot claim anything under the original tenancy agreement. He cannot even pay rent at the rate of the original tenancy agreement, he can only pay rent at rate agreed upon between him and the original landlord, if any, otherwise he has to pay the current annual rental value if that can be determined. A tenant whose tenancy is still subsisting and has not been ordered by the Court to give up possession pays "rent" and not "*Mesne* profits."[8]

---

[3] Pan Asia Co. Ltd. v NICON Ltd. (1982) 9 SC 1 at 18
[4] Section 7 of the Land Use Act 1978
[5] Marine and Genearl Assurance v Rossek (1986)2 N. W.L.R. 750
[6] ODUYE v Nigeria Airways Ltd. (1987) 2 N.W.L.R 126
[7] [1970] All N.L.R. 257
[8] Johnson v Ewutuya (1996) 1 N.W.L.R 744 at 7489

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

Mesne profit includes intermediate profits, that is, profits which have been accruing between two given periods. It can also be equated to the value of use and occupation of land during the time it was held by one who was in wrongful possession and also by one who has not agreed on any rents with the landlord, even though such an occupier cannot strictly-speaking, be described as a trespasser. *Mesne* profits are generally calculated on the year value of the premises. The difference between mesne profits and rent is that a claim for rent is liquidated whilst a claim for *mesne* profits is un-liquidated. Where a person who having lawfully gained possession of a premises stays over, after the expiration of the tenancy period, whether or not he was the original tenant, he becomes by operation of law, a statutory tenant, and he would be liable to pay *mesne* profit and not rent.

The tenancy at sufferance has been described as the cousin or next of kin[9] of the tenancy at will. But their parents are really not directly related. Both types of tenant usually arise from a holding over by a contractual tenant but whereas a tenancy at will arises from such holding over with the agreement of the landlord, the holding over in the case of the tenant at sufferance arises without the agreement or consent of the landlord.

In effect, the tenancy at sufferance is a perfect example of a statutory tenancy because the tenant holds over without a contract but is nonetheless protected, just like the tenant at will, by the recovery of premises statutes against ejection without due process. His parent is the Recovery of Premises laws hence he is referred to at all as a 'tenant' otherwise he would be a trespasser for being in occupation of some other person's premises without that other person's consent or agreement.

Both the tenant at will and the tenant at sufferance are therefore statutory tenants with the tenancy at will still retaining some element of consensus ad idem as between the landlord and the tenant and thereby qualifying as a quasi-contractual tenancy. This is because the consensus between the parties is not with respect to all matters and issues which should make up a contract. For instance, the tenant will be without a well-defined or specific estate or demise.

A tenant on whom a notice to quit has been duly served is a tenant at sufferance because the notice served on him by the landlord is an indication on the part of the landlord that he no longer consents or agrees to the tenant's continued occupation of the premises after the expiration of the notice. If during the pendency of the notice to quit, the tenant sublets the premises to another, the occupation of that other will be unlawful and will therefore disqualify that other from the protection of the statutes as he is not and cannot become the landlord's subtenant who is entitled to protection under the statutes.

The same situation applies to a supposed subtenant put in occupation of premises in breach of covenant on the part of the tenant not to sublet the premises.

[9] Wheeler v Mercer (1956) 3 AER 631, 63

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

The occupation, being in breach of covenant, will be unlawful and will not be protected by the statutes.

A tenancy at will arises whenever a tenant with the consent of the owner occupies land as tenant (and not merely as a servant or agent) on terms that either party may determine the tenancy at any time. This type of tenancy may be created expressly[10] or by implication. Common examples are where a tenant whose lease has expired holds over with the landlord's permission without having yet paid rent on a period basis,[11] where a tenant takes possession under a void lease or under a mere agreement for a lease and has not yet paid rent or a person is allowed to occupy a house rent-free and for an indefinite period; and usually where a purchaser has been let into possession pending completion.[12]

From the information garnered from the above, it is certain that the relationship between landlord and tenant is a creation of express or implied agreement between the two or by operation of law.[13] And this must be established by evidence.[14]

3. Consent Aspect of the Land Use Act[15] in Matters of Landlord and Tenant

I. Impact of Land Use Act on the Relationship of Landlord and Tenant

No provision of the Laud Use Act[16] has excited more comments, debates and criticisms as the consent provisions.[17] That consent is required for mortgages, leases, subleases and assignment of rights of occupancy is incontrovertible. But does periodic tenancy require the Governor/Local Government Council consent to give it validity? It is the task of this paper to briefly examine the sections of the Act that has direct! relation to consent, discuss the nature of periodic tenancy in the light of the consent provisions, and see if consent is required on a literal construction of the Act. If, at the end, we find the law impractical, some suggestions would he proffered to exclude periodic tenancy from the consent requirements.

II. The consent provision

[10] Mansfield & Sons Ltd. v Botchin (1970) 63—612
[11] Meye v Electric Transmission Ltd. (1942) Ch. 290
[12] Wheler v Merce (1975) AC 416 at 425
[13] Udith v lzedonmwen (1990) 2 NWLR (Pt. 132) 357
[14] NCHC Ltd. v Awoyele (1988) 4 NWLR (Pt. 90) 588
[15] LUA 1978, LFN 2004
[16] [Hereafter, The Act]
[17] Nnami, A, "The Land Use Act – 11 Years After," (1989) 2 Gravitas Rev of Bus & Prop Law (GRBPL) No. 6, 31; Omotola, J A, "Volacanic Development in Nigeria Law of Real Property," (98-87) NJ Corzternp L 6; Awodein, K, "Failure to Obtain Consent to Mortgage – Judicial Attitude," (1988) 1 GRBPL No 1, 56; Ezejiofo G, "The Land Use Act: A Critical Review," (1977) 2 Nig Juridical Rev 1; Fekumo, J, "The Land Market Under the Land use Act 11," (1989) 2 GRBPL No 9, 2; Sholanke, 00, "Is the Grant of Governor's Consent Under the Nigerian Land Use Act Automatic?" (1989) 2 GRPL No 12, 13; Utuama, A A, "Crocodile Tears in Savannah Bank (Nig) Ltd v Ajilo," (1989) 2 GRBPL No 7, 29; Okoli, "Savannah Bank(Nig) Ltd v Ajio: Crocodile Tears in (1988/89) 10 & 11 J of Priv & Prop Law 1; A. O. U. Ekpu., "The Consent Controversy Resurrected? Awojugbagbe Light Industries Ltd v Chinukwe," 1 (1993) Edo State Univ Law Journal P. 117

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

The sections that touch on consent in the Act are 21-26, 28 and 34.

Section 21 provides:

It shall not be lawful for any customary right of occupancy or any part thereof to be alienated by assignment, mortgage, transfer of possession, sublease or otherwise whosoever:

(a) Without the consent of the Governor in cases where the property is to be sold by or under the order of any court under the provisions of the applicable Sheriffs and Civil Process Law; or

(b) In other cases without the approval of the appropriate Local Government.

The Act recognises two types of customary rights of occupancy one granted expressly by a Local Government Council because the land is in a part of the state declared to be non- urban by the Governor and the holder had the land vested in him before the Act came into operation on March 29, 1978. This is covered by section 36. An interesting point to note is that while section 36(5)(6) prohibit in fact criminalises — the 'alienation of any deemed granted customary right of occupancy, section 21 provides that any customary right of occupancy may be alienated so long as the Governor's or Local Government Council's consent is obtained. One way to reconcile this contradiction and inconsistency may be that section 36 (5) (6) apply only to absolute alienation of the land in contrast to alienation of only part of the interest in the land such - as a lease, mortgage or possession which leaves some reversion in the holder.

We should appreciate that while section 21(a) insists on the consent of the Governor being obtained, section 21(b) uses the word "approval" where a Local Government Council is in issue. The distinction between "consent" and "approval" is material because in *Quo Vadis Hotels Ltd v Commissioner of Lands*[18] the Supreme Court held that consent implied that it should be obtained prior to the transaction while approval may come any time after the transaction has been concluded.

Section 22 provides:

It shall not be lawful for the bolder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise how without the consent of the Governor first had, and obtained.

Section 23 has substantially the same provision save that it applies to alienation by a sublease of a statutory right of occupancy holder. In view of the interlocking nature of sections 22 and 34 (7)-(8), it may be apt to discuss both side by side. Section 34 (7) (8) provide:

[18] (1973) 3 ECSLR 416

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

(7) No undeveloped land in excess of one half hectare in urban area deemed granted by the Governor held by any person shall be further subdivided or laid out in plots and no such land shall be transferred to any person except with the prior consent in writing of the Governor.

(8) Any instrument purporting to transfer any undeveloped land in contravention of subsection (7) above shall be guilty of an offence and liable on conviction to imprisonment for one year or a fine of Five Thousand Naira (₦5,000.00)

These two sections show that for properties in urban area there are concurrent rules on consent, The scope of section 34 (7) (8) is limited to undeveloped land in excess of one half hectare held by a right holder before the Act came into force; whereas section 22 applies to all other alienation of statutory right of occupancy - whether in respect of land in non-urban area granted by the Governor, land in urban area deemed granted by the Governor under section 34 (l)-(4)[19] or statutory right of occupancy over urban land granted by the Governor under his hand under section 5 (1).

The legal consequence of the distinction between the provisions of sections 22 and 34 (7) (8) are far reaching. A transaction in contravention of section 22 is rendered void under section 26 which provides: 'any transaction or any instrument which purports to confer on or vest in any person' any interest or right over land other than in accordance with the provisions of this Act shall be null and void.'

4. Capacity of the Parties

In order to be a landlord or a tenant the law requires that the parties to the agreement must be legal persons or juristic persons who in law can sue or be sued.[20] There must be no legal disabilities. Accordingly unincorporated bodies, infants, aliens and certain companies have disabilities under the law.

I. Unincorporated Bodies

These are social clubs, cultural societies, philanthropic organisations, churches or mosques and other religious bodies and co-operative societies. Generally, these unincorporated bodies can take or grant a lease in the name of its trustees. The qualifications to make grants or restrictions to do so are statutory?[21] In strict law the unincorporated bodies must be registered.[22]The registration gives them legal backing.

Pan C of CAMA[23] must be complied with.

[19] Savannah Bank of Nig. Ltd v Auto [1989] 1 NWLR (Part 77) 305
[20] Dantumbu v Adene & Ors. (1987) 4 NWLR 314
[21] National Bank Ltd. v Korban Brothers Ltd. (1976) FNLR 116 at 117
[22] Sections 685 to 689 CAMA Cap. 59 Laws of the Federation of Nigeria 1990
[23]Formerly under Land (Perpetual Succession) Act but now under CAMA 1990

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

II. Infants

Only adults who are at least 21 years old can grant or take a lease and other legal interests in land?[24] Land can devolve on infant by inheritance.[25] It is also permissible in law for adults to exercise leasing rights on behalf of an infant.[26] It would seem that there is no restriction for an infant to hold a Customary Right of Occupancy in land.[27]

III. Aliens

A person who is not a native of this country is an alien in Nigeria. It has been held that a company registered outside Nigeria is also an alien,[28] and must comply with the law before the acquisition of a lease unless exempted by Governor.[29] Most authorities agree that an alien needs the prior consent of the Governor before he can take a lease.[30] It seems that a lease granted without the grant or acquisition is inchoate until the necessary consent is obtained retrospectively.[31] It is pertinent to note that only the Attorney-General or a person authorised by him[32] competent or has *locus standi* to seek relief in court to eject or end occupation of an alien on land based on the non-compliance with the Act and therefore private individual is not competent.[33]

IV. Companies

Incorporated bodies can grant or take a lease in its incorporated names,[34] provided that they are not precluded from doing so by the object clauses in the Memorandum and Articles of Association of the companies. Lease granted or taken by a company must be by deed sealed with the Common Seal of the Company and not by a mere rubber stamp.

5. Tenancy Agreement

Once there is a valid lease, a tenancy agreement is thereby created and certain rights and obligations are enjoyed by both the Landlord and the tenant. These are in form of covenants. Covenants are promises made under seal or contained in a deed. The promises are enforceable according to the rules of the law of contract. Usually, the Covenantor undertakes to restrict the use of the land for the benefit of the Covenantee. Some of these covenants are specifically agreed by the parties according to the terms expressly set out by the parties— this is called the express covenants. Others, even though not specifically agreed upon are

[24] Sections 673 to 695 CAMA Cap. 59 Laws of the Federation 1990
[25] Section 7, Land Use Act 1978; Sections 17(3) & 26 of the Property Conveyance Law 1959 and Sec. 41 of the Conveyance Act 1881
[26] Sec. 7 (b) Land Use 1978
[27] Sec. 7 (a) Land Use Act: Sec. 42 Conveyance Act 1881 and Sec. 49 Settled Estate Act 1877.
[28] Uche 1. Osimiri, Modem Laws of Landlord and Tenant in Nigeria (1994) at P. 8.
[29] British & French Bank Ltd. v Akande (1961) All N.L.R. 820
[30] Native Lands Acquisition Law, Cap. 800959., West Acquisition of Land by Alien Law Cap 2 (1963) East. 1971 (Lagos) and Land Tenure Law 1962 (North)
[31] Rufai v Olugbeja (1962) NNLR 92
[32] Solanke v Abed (1962) NNLR 92
[33] Sec. 70) Acquisition of Land by Alien Law
[34] RNHW v CAMA (1991) 2 NWLR (Part 171) at P. 67 & 75

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

nevertheless implied by law and are sometimes called usual covenants. These are the implied covenants.

Implied covenants are restricted to certain matters which are considered fundamental to the relationship of landlord and tenant. The parties can however expressly agree on matter not implied by the law. Since the parties cannot agree to contract against the law, it would seem that any express covenant which purports to overrule an implied covenant would be ineffective as the implied would override the expressed one.

The implied covenants by the landlord are as follows:

I. Implied Covenant for quiet enjoyment.

The Landlord has a duty to guarantee the tenant quiet enjoyment of the demised premises, since the tenant is entitled to peaceful enjoyment of the property let to him. This covenant admits of an undertaking against interruption of the tenant's enjoyment of his possession. If the tenant's possession is disturbed he can sue the landlord for redress.[35] Besides, an action for injunction can be maintained to protect the tenant during the pendency of the action for possession against the landlord.[36] He can also maintain an action against the landlord for damages.[37] He can also maintain an action for trespass.[38] The specimen of such covenant is as follows:

> The landlord hereby covenants that the tenant paying rent hereby reserved in the lease and observing/performing all his obligation/several covenants on his part under this agreement, shall peaceably hold and enjoy the demised premises throughout the term created without any interruption by landlord or any person rightfully claiming through, under, from or on trust for him during the term of the tenancy.

It is to be noted that in Lagos State, a landlord who attempts to eject, forcibly eject, harass or molest a tenant with a view to ejecting him and thereby disturbing his quiet enjoyment commits a criminal offence punishable with a fine of ₦200 or 3 months imprisonment or both.[39]

The implied covenant for quiet enjoyment is of common law origin but it now enjoys statutory backing and in Lagos such a covenant is now implied in respect of all leasehold property made for valuable consideration.[40] This means that the landlord is liable for his own acts and that of his privies or agents but certainly not that of strangers.[41]

[35] Sections 24 & 28 CAMA 1990
[36] Akpan v Uyo (1986) 3 NWLR (Pt. 26) 63 at 65
[37] Praying Band of Cherubim & Seraphim Church v Udokwu (1991) 3 NWLR (Pt. 182) P. 716
[38] Gov. of Lagos State v. Ojukwu (1986) NWLR (Pt. 18) 621 at 637-8
[39] Kosoko v Nakoji (1959) N.R.N.L.R. 15
[40] Sec. 36 (I) (a) (b) Rent Control & Recovery of Premises Edict No. 9 (1976)
[41] Sec. 7 of the Conveyance Act

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

II. Qualified Undertaking as to Title

The tenants' quiet enjoyment extends only to the extent of the interest of the landlord.[42]Accordingly, where the landlord grants more interest than he actually had the grant would be effective to pass only the length of his interest.[43]

III. Undertaking to put the Tenant in Possession

This means that the landlord shall do nothing to prevent the tenant from taking possession at the date indicated in the lease otherwise he will be liable to pay damages to the tenant. Accordingly if the tenant is unable to take possession of the premises let due to the refusal of the previous tenant to quit or if the previous tenant wrongfully remains in occupation of the premises, the new tenant can sue the landlord for damages.[44] But if the tenant is aware that the premises are not yet vacant at the time of the contract, he cannot succeed in his claim for damages. Thus in *Chellarams Ltd. v Habib,*[45]the proposed purchaser was aware that the shop he was about to purchase was in fact occupied by a third party at the time of the contract for assignment and transfer of the lease of the shop and therefore the maxim caveat emptor (let the buyer beware) applied to bar his claim as there was no false representation.

IV. Non-Derogation from Grant

The Landlord and his successors in title cannot use the adjourning land or permit it to be used for purpose of undermining the tenant's lawful use of unfit or materially less fit for the purpose for which it was leased. For instance in *Aldin v Clark,*[46] it was held that the landlord's new building on the adjourning land interrupting free flow of air to the tenant's premises was derogation from his grant. The landlord can be restrained by injunction if he and his privies act in the breach of this implied covenant must first prove exclusive possession.[47] Furthermore, if the Landlord or and his privies attempt to perform acts inconsistent with the purposes of the lessee or detrimental to his lawful use, the tenant can restrain them by injunction and possibly in damages.

V. Implied Fitness for Human Habitation

In appropriate cases there is an implied condition that the premises demised to the tenant is fit for habitation. The landlord may therefore be required to ensure that the premises are certified fit for occupation. But generally, the maxim Caveat emptor (let the buyer beware) applied. Accordingly, at all times a buyer/lessee must exhibit carefulness and diligence to find details about the land he is leasing. Although, the tenant can waive the landlord's obligation to make the premises fit for human habitation;[48] there is also the implied warranty

[42] Madilas Ltd. v Amodu (1973) CCHCJ 187 at 190
[43] Baynes v Lloyd (1895)1 Q.B. 610
[44] Aiunrase v Federal Commissioner for Works & Housing (1975) SC I
[45] Miller v Emeer Products Ltd. (1956) Ch. 304
[46] Chellarams Ltd. v Habib (1959) LLR 28
[47]Aldin v Clark (1932) KB 617
[48] Aniosu v Okuaza (1988) The Guardian Law Report, 15th April

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

that proper material were used in the construction of the premises and that it is built in a good workmanlike manner.[49]

VI. Implied Covenant to Pay Rent

In strict law the reservation of rent is not considered as an essential part of a tenancy. Indeed, in Lagos State the definition of a tenant includes a person occupying premises on payment of rent or not.[50] But in practical life rent should be paid for the demised premises. There is generally an implied obligation that rent fixed shall be paid to the landlord or his agent in legal tender at the time of the contract or entry into possession. But before rent can be validly reserved the amount must be certain and ascertainable.

The requirement of payment of rent is applicable and implied in the case of the holder of a Right of Occupancy under the Land Use Act 1978.[51] This includes the tent to be revised at intervals by the State Governor.[52] The Governor however reserves the right to make the grant free of rent or at a reduced rent.[53]

VII. Implied Covenant to pay Rates, Taxes and Outgoings

There is an implied obligation on the part of the tenant to pay all the rates, taxes and outgoings etc. imposed on the land leased excluding the ones that are usually reserved for the landlord.[54] A tenant of State land in any part of the State of the Federation has implied obligation to pay rates, taxes, charges, duties, assessments and other outgoings of whatever description.[55]

VIII. Implied Covenant not to deny the Landlord's Title

The landlord of any tenancy is presumed to be the owner of the premises and the tenant is presumed to be the lawful tenant. Accordingly, in every lease there is an implied covenant that the tenant shall not impugn, deny, dispute or disclaim his landlord's title or perform any act prejudicial, detrimental or inconsistent with the existence of his tenancy. If this implied covenant is broken, the landlord may re-enter by suing for possession.[56]

VII. Implied Covenant not to commit Waste

It is implied in every lease that if the tenant deliberately or negligently allows the condition of the premises to deteriorate, he commits acts of waste and this is a ground for the landlord to recover possession. In strict law, the liability of the tenant for the maintenance of the

[49] Perry v. Sharron Development Co. Ltd (1973) 4 ALL ER 390
[50] Dogbesan v George (1941) 6 NLR 10
[51] Perry v Sharron Development Co. Ltd. (1973)4 All ER 390
[52] Sec. 40 (1) Recovery of Residential Premises Edict No.9 of 1976
[53] Sec. 5(1) (C) (d) Land Use Act 1978
[54] Sec. l6 of the Land Use Act 1978
[55] Sec. 17 of the Land Use Act 1978
[56] Sec. 65(1) (b) Registered Land Law (Lagos)

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

building, in the absence of express covenant for repairs depends partly on the doctrine of waste and partly on implied obligation for the use of the premises in a tenant like manner.[57]

VIII. Implied Rights of the Tenant

It is pertinent to mention here that a tenant is entitled to the enjoyment of certain implied rights in respect of the demised premises. These include the taking of estovers, gathering of growing crops or emblements, the removal of his trade fixtures and agricultural fixtures at the expiration of the tenancy. Unless the parties contract otherwise, the tenant has the right to remove his trade appliances e.g. counters, shelves, electric light fittings etc at the expiration of his term.[58]

IX. Express Covenants

It is usual for parties to a lease to make express covenants setting out undertakings, liabilities and mutual promises amongst themselves. If they omit or neglect to make express provision in respect of certain matters not within the covenants implied by law, neither the landlord nor the tenant is obliged to observe them. Since there is freedom of contract, parties are free to insert any covenant they deem appropriate as long as they do not offend the Rent Acts or other statutory provisions. In strict law, for such covenants to be enforceable they must not be contrary to public policy,[59] or prohibited by law.[60]

Express Covenants are either in positive form compelling the performances of an obligation or in the negative form to abstain from doing certain prohibited acts. They are normally embodied in a deed or the agreement. A breach by the tenant is usually a ground for the order of possession on the application by the landlord. Express Covenants will be rendered unenforceable if they run contrary to the provisions of the Rent Acts. Accordingly, any issue sought to be made the subject matter of express covenant must conform to the requirement stipulated by the Rent Acts and Subsidiary legislation if the covenant are to be enforceable. Some of them are as follows:

X. Covenant to Pay Rent and a Proviso for Re-Entry for Non-Payment

Normally, covenant to pay rent and a proviso for forfeiture or re-entry for breach is usually incorporated expressly into every lease.[61] Sometimes this will contain a stipulation as to the time and place of payment. But where the lease is silent regarding the date of payment, such date may be inferred from the previous course of dealings.[62] At times the parties make express covenant that the rent should be paid in advance.

[57] S. 7 (b) (ii), State Land Act; S. 6(b)(ii) (East Sac) Sec. 7(bxi) West, 11(a) Land Tenure Law (N)
[58] Williams v LSDPC (1978) 1 LRN 358
[59] NCHC Ltd. v Awotele (1988)4 NWLR Part 90588 at 592 & 604
[60] Ige v La Champaign General (1935) 12 NLR 51; See also Anthony v Ajayi (1961) LLR 139
[61] Adedubi v Makanjuota (1844)10 WACA 33
[62] Est., v Moruku (1940) 15 NLR 16 at 119

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

In the absence of express stipulations as to the date of payment, payment is not due until the end of the month or quarter or year in case of monthly, quarterly or yearly tenancies. Strictly, non-payment for rent is a breach of tenancy agreement leading to forfeiture of the lease by the tenant as the landlord is entitled to re-enter.[63]It is important to note that the obligation to pay rent is independent of the landlord's covenant to repair, as, the tenant is not discharged from the obligation to pay rent merely because this landlord is unwilling to fulfil his obligation.[64]

A landlord may not claim rent from a person put in possession by the original tenant; because there is no privity of contract between them, but he may claim *mesne* profits from such a person if he holds over after the expiration of the original tenancy under which he was put in possession.[65]*Mesne* profits include, intermediate profits, that is, profits which have accrued between two given periods. It can also be equated to the value of use and occupation of land during the time it was held by one who was in wrongful possession and also by one who has not agreed on any rents with the landlord, even though such occupier cannot, stricto-senso, be described as a trespasser. *Mesne* profits are generally calculated on the yearly value of the premises. The difference, between *mesne* profit and rent is a claim for rent is liquidated whilst a claim for *mesne* profit is un-liquidated.

XI. Covenant against Alteration of the Demised Premises

Alteration means changes, modification, variation, addition, partition, or transformation of the form, constitution or the actual fabric of the building or the erection or construction of a new building. The usual practice is for the landlord to forbid alteration except with his consent in writing subject to an indemnity covenant by the tenant to restore the premises to the pre-alteration or pre-occupation state at the end of the term. Where this happens, it will amount to a qualified covenant. There may also be an absolute prohibition against any alteration under any circumstance whatsoever. In practical life, the landlord may sometimes waive the compliance with this covenant by permitting its breach if he so desired.[66]

A landlord whose premises are altered without his consent or approval has a remedy against the tenant. He can either compel him to restore it to the original form[67] existing prior to the letting of the premises. Or, in the alternative, he can maintain action in damages which would be assessed on the cost of the materials and labour needed to replace, reinstate or its restoration to the pre-tenancy state. Sometimes the opinion of an expert may assist the Court to determine what amounts to alteration.

In *NCHC Ltd. it Awoyele*[68] the Court of Appeal accepted the expert evidence of a professional Estate Surveyor/Valuer that without the landlord's approval the demised

[63] Thompson v Chaina (1962) LLR 86
[64] Nigerian Technical Co. Ltd. v Solomon (1970) NNLR 88
[65] Akala v Ayilara (1978) 10 CHHC) 269
[66] Oke v. Salako (1972)11 CCHCJ 88 at 90
[67] Marine and Getterai Assurance v Rossek (1986) NWLR 750
[68] Agbeji v Kbawan (1986) NWLR (Pt. 42) 436 at 437

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

building was stripped bare of almost its plumbing, electrical fittings and other structural change inside the building which does not conform with the building plan; as structural alteration.

XII. Covenant Restricting the Use of the Premises

Most building leases contain express covenant restricting or confining the demised premises to a particular use or prohibiting specific use depending on the precise terms. The covenant may be designed to maintain or enhance the value of the property or protect the neighbouring occupiers from annoyance.[69] The attitude of the Court is to construe the express wordings of deed of lease to discover the real purposes and whether a single, dual or multiple users were intended or permissible by the covenant. For instance, in *Zard v Saliba*[70] a lease was granted for use as residence, trading, garage, sawmill and machinery. The tenant used same as a proprietary club where he sold beer, other drinks and entertained guest with music. The court held that there was no breach of covenant as the word trade or business is applicable to proprietor's club and that the proprietor of such clubs trade.

The landlord's remedy in respect of the breach of user covenant is to seek injunction to restrain the tenant or he would be compensated in damages. If there is a right of re-entry, forfeiture may also result for breach of covenant against user.

XIII. Covenant of Tenants Improvements and Developments on the Demised Land

Normally, improvement effected by the tenant with previous written consent of the landlord is recoverable in form of compensation at the expiration of the lease. And most leases private and state land leases contain express covenant by the tenant to effect improvements, e.g. covenant to fence the demised premises.[71] This type of covenant is frequently found in long building lease to vacant undeveloped land and failure by the lessee to effect the prescribed development within the stipulated time limit would incur the forfeiture of the lease,[72] entitling the landlord to recover possession.

XIV. Covenant to Repair

At common law express covenant for repairs imposing liability on the landlord may not displace the tenant's liability for waste. In short leases the landlord may be responsible for the repairs while in the long leases this responsibility may be placed on the tenant by the insertion of express covenant to this effect.

[69] Ashimi v Sahaar (1967) LLR 59
[70] NCHC Ltd. v Awoyele (1988) 4 NWLR (Pt. 90) 588
[71] Halsburys Laws of England 3rd Ed. Vol. 23 P. 620 Article 320
[72] (1959) WRNLR 63 at 65

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

Where there is no expressed covenant to repair, generally there is an obligation on the landlord to repair at least in Lagos State.[73] There the law provides that the landlord will keep the roof and main walls in repairs.

XV. Covenant to Insure

In long lease there is normally a covenant to insure against losses and damages to the demised caused by fire and other risks. If this responsibility is on the tenant he must 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 the landlord. In effect, there will be a breach of the covenant if the property is not insured at any period irrespective of whether the property is damaged or not. The landlord may insure and claim re-imbursement from the tenant. Strictly, what is to be insured is the building and not the land on which it stands. Thus, in *Williams v. Eko Properties Investment Ltd*.[74]the Court of Appeal held there was no breach of the covenant to insure. What was let was an old building with the new one still under construction at the date of the action. The landlord cannot complain since he had been paid compensation for pulling down the old building.

XVI. Agreement to Pay Rent and Rent Review

Rent must be the subject of an agreement between a landlord and his tenant. This usually poses no problem at the commencement of the lease as generally the parties reach an agreement on that term before the landlord lets the tenant in. However, in long leases prudent landlords insert a rent review clause which enables them to obtain a higher rent than that agreed at the commencement of the lease. In view of the inflationary trend in the country and the fact that real property appreciates almost by the day, it will be unwise for a landlord to create a long lease, say for ten or more years, without inserting a rent review clause which will force the parties back to the bargaining table after intervals of two or five years. Since the parties almost always fail to reach an agreement with ease it is advisable to insert an arbitration clause in the rent review clause so that recourse may be hard to an arbitrator to fix the rent.

In the absence of a rent review clause the landlord cannot unilaterally increase the rent of the demised premises after the initial agreement. It cannot be over-emphasised that every term of the tenancy agreement or lease must arise a *ex-contractu*. Thus in *Jibowu v Epee*[75] where the landlord wrote requesting the tenant to thenceforward pay rent in advance as opposed to arrears as they initially agreed, the court held that the tenant was not bound to honour the request in the absence of an express or implied acceptance of the offer. And in *Gomez v Williams*[76] it was held that the landlord could not unilaterally compel his tenant to pay rental. monthly where he had been paying yearly.

[73] Cole v Begho (1959) 4 FSC 75
[74] Ishola Williams v Hammond Projects Ltd. (1988) 1 NWLR (Pt. 71) 481
[75] [1977] 4 OYSHC (Pt II) 151
[76] [1972] NMLR 149

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

A rent review clause came up for determination in the recent case of *Awaye Motors Ltd v Adewumni,*[77] By a deed of lease a term of 25 years was created with a clause that after ten years the rent would be subject to review. The initial rent was N1,500 per annum. When the parties failed to reach an agreement the landlord commenced the present proceedings asking. The court to stipulate rent for them. The High Court took judicial notice of the inflationary rate and government's effort to combat it, to fix the rent at ₦4, 500 per annum. On the tenant's appeal, the Court of Appeal held that the trial court was in error in arbitrarily fixing a rent of ₦4, 500 without evidence of the open market rental value of the premises

This case may be contrasted with the English case of *Beer v Bowden,*[78] Under the terms of a lease demising premises for a term of fourteen years from 25th March, 1968, the rent payable by the tenant was £1,250 per annum for the first five years and it was to be reviewed every five years thereafter, the new rent to be "such rent as shall ... be agreed between the Landlords and the Tenant but no account shall be taken of any improvements carried out by the Tenant in computing the amount of the increase, if any, and in any case (the rent shall he) not less than the yearly rental of £1,250 payable under the lease." The parties failed to agree on the new rent at the end of the first five years and the landlord issued an originating summons seeking determination of the questions whether, on the true construction of the rent review clause, the rent payable during the second five-year period was the proper and reasonable rental for the premises having regard to their market value on 25th March, 1973, and, if so, whether the proper and reasonable rental was £2,850. The Court held that the landlord was entitled to a rental representing what the demised premises were reasonably worth on 25th March, 1973. Goff, U said:

> Now, the court must imply q term in order to give business efficacy to the contract.... It is quite obvious (the rent review clause) that the parties intended that the rent should be increased if the premises appreciated in value and none the less so although they used the words 'if any.' They clearly contemplated also, as it seems to me, that the rent should be increased to such amount as would be a fair rent for the premises excluding tenant's improvements. They failed to agree. There is a hiatus. As the Judge rightly held, that hiatus has to be filled by an implied term, and it seems to me quite obvious that one must imply the alternative which gives effect to that clearly expressed intention of the parties.

What distinguishes this case from *Awaye Motors Ltd v Adewunuji* is that in the English case there was evidence from the landlord of the open market rental value of the property, and based on that the court could make an order that was not whimsical. Of course, if the landlord can establish in evidence what the open market rental value of the property is he would be able to recover that in a claim for compensation for use and occupation of the premises. Once

[77] [1992] 1 Current WLR 468
[78] [1981] 1 All 1070

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

again, this evidence was lacking in *Adewunini*, and so the landlord was unable to recover under that head.

In lieu of a rent review clause some leases contain an option to renew the lease on the expiration of the current one. Such options usually stipulate that they are subject to a rental to be agreed between the parties. Unless the parties agree on the rental before the expiration of the term for the time existing, such an option is void for uncertainty and is unenforceable by either party. In *Ayinke v Osunsedo*[79] the option to renew was in the following effect: "If the tenant shall be desirous of continuing the tenancy hereby created at the expiration of the term hereby granted and shall give to the landlady three (3) months-notice in writing of his desire subject to a rent to be agreed between the parties, and perform the several stipulations herein contained and on his part to be observed up to the termination of the tenancy hereby created then the landlady will let the said premises to the tenant for a further period of five (5) years at a rent to be agreed." No rent was agreed between the parties and at the expiration of the five-year term initially created the landlord commenced proceedings to recover possession of the shop. The tenant sought to rely on the opinion to renew clause. George, J held that the rent clause in the option was void for uncertainty and ordered possession in favour of the landlord.

The clause is a two-edged sword and can work against the landlord as the case of *Farah Film Service Ltd v American Overseas Petroleum Ltd*[80] illustrates. By a 1962 sublease the plaintiffs demised a five-year term to the defendants at an annual rent of £1,750. In the option to renew clause the landlord covenanted to grant to the defendants a further term of five years at a rent to he agreed. In exercise of the option the defendants offered to pay £1,750 to cover the first year after the original five years and an additional £.132 to cover advance payment in full for the remaining four years' rental. The landlords in reply, counter offered £5,250 to cover advance payment in full for the remaining four years' rent. The sum of £1,750 was paid for the first year but the defendants failed to pay for the subsequent years although they remained in occupation. In this action the landlords claimed arrears of rent for the period 1968 to 1970 at the rate of £1,750 per annum. Kassim, J held that there was no definite agreement as to rent for which the plaintiffs could claim. He said:

> Generally, if the terms of an agreement are so vague or indefinite that it cannot be ascertained with reasonable certainty what is the intention of the parties, there is no contract enforceable at law, unless the uncertain part of the agreement can be separated from the substantial part thereof, and it appears that this severance can take place only where the clause in question has been agreed, but it is meaningless, and not where the clause is yet to be agreed.

[79] [1973] 8 CCHCJ5
[80] [197] 9 CCHCJ 1409

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

The genesis of the above rule appears to be the Canadian case of *Young v van Benson*[81] where the following head-note appears:

> Where a lease provides that the tenants has an option to rent the premises for a further period, fixing no term except the length of such period and leaving the rental to be determined by agreement between the parties, such provision is too vague and indefinite to be capable of enforcement and does not confer upon the tenant any right to a tenancy which is enforceable at law. In the absence of a supplementary agreement fixing the terms of the new lease and the rent to be paid, the tenant is bound to surrender possession at the expiration of the original lease.

Such a supplementary agreement as contemplated in the above quotation can be an arbitration clause in which case the parties must resort to arbitration; or it may be stipulated that the rent will not be below the rental value of the premises in which case the plaintiff may call an estate valuer to testify to what the value is. In the absence of such helpful supplementary term is as these, the court cannot fill in the hiatus as it did in the case of a rent review clause.[82] In the latter circumstance there is a subsisting lease which creates an estate in the land and it is conceded that the tenant must pay rent. But in the case of an option to renew clause there is no existing lease because an essential term, namely the rent, is neither agreed nor ascertainable.[83]

The foregoing on option to renew has no application to premises subject of Rent Control Statute. An option to renew clause which is subject to rent to be agreed is not void for uncertainty because the rent has been set out by the statute and such rent must be read into the clause. In *Agbaje v Bonkole*[84] the landlord granted a lease to the tenant with an oi5tion to renew at a rent to be agreed between the parties. The premises were subject to Rent Control Statute. The issue for determination was whether the rent to be agreed was contemplated to be contrary to the provisions of the statute and therefore unenforceable against the landlord. It was held that the court must impute on the parties an intention to be governed by the statute and consequently the option was not void. Lewis, JSC said:

> The special statutory requirement binding the parties must be read into the agreement and here as under the law the parties had no discretion to fix a rent, other than that prescribed in accordance with the rent control legislation; that rent must be deemed to be the rent contemplated by the parties for the purpose of the option to renew the lease so that it was not uncertain as found by the learned trial Judge.

[81] (1953) 3 Dominion LR 702
[82] Beer V. Bowden [1981] 1 All ER 1070
[83] Ibid at p 107 per Goff LJ
[84] [1971] 1 All NLR 275

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

This covenant is meant to protect the tenant's investment in a building lease. A lease containing option to renew would give the tenant the right to obtain a new lease for a further term on the determination of the current or subsisting term. The tenant must specifically exercise the option as the mere existence of option with its exercise within the stipulated time does not constitute a demise of the optional terms.[85] Strictly, the tenant could exercise the option to renew by compliance with the conditions precedent as stipulated in the lease. For instance, in the case of *Adejomo v. David Hughes & Co. Ltd*[86] the Court of Appeal held that a tenant who wishes to exercise an option to renew a lease must conform with the conditions in the lease as to its exercise and these conditions will be strictly construed.

An option to renew a lease will lapse unless the conditions precedent to its exercise is fulfilled. In *International Institute of Tropical Agriculture v. Khawam*[87] the tenant while giving notice of intention to exercise option to renew the lease offered to pay reduced rent instead of the rent reserved during the original term. The Court of Appeal held that it was not a valid exercise of the option as the latter contained new term amounting to a counter-offer. The option lapsed and the landlord could not recover the rent accruing had the option been exercised.

XVII. Right to Enter, View and Repair

An exercise covenant must be inserted by a landlord to enable him enter, view repairs etc where this is not implied in the lease as in Lagos State where Sec. 65(c) of the Registered Land Law (1973) specifically provided that "there shall be implied in every lease, agreements by the lessee with the Lessor to permit the Lessor or his agent with or without workmen or others at all convenient times and after a reasonable notice to enter on the land and examine the state and conditions thereof.

XVIII. Covenant not to Assign, Sub-let or Part with Possession

There is generally no implied covenant in a lease prohibiting the tenant from assigning, subletting or parting with possession. If the landlord wishes to exercise such control, he must do so by express covenant in the lease.[88]

A tenant who assigns, sublet or part with possession of the demised premises in breach of covenant i.e. without consent of the landlord will forfeit his interest at the option of the landlord.[89] Strictly, forfeiture remedy is to be procured by the order of the court and not through self-help unlawful eviction.

In *Apena v Balogun*,[90] Taylor, C. J. observed:

[85] Sec. 6 (c) Registered Land Law (1973) (Lagos)
[86] Oke v Salako (1972) 11 CCHCJ 88 at 90
[87] (1989) CRBPL (No. 2) P. 56
[88] Moukarrel v Hanna
[89] Okoye v Dumex (Nig.) Ltd 24, 201, 371
[90] (1984) SC 149

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

> LEDB seem to be of the opinion that whenever their tenant sublet, they can take the law into their hands and eject him without any recourse to courts. I am not aware of the existence of any such power being vested in them and certainly none has been pointed out to me in their numerable cases I have heard.

The offending tenant who fails to apply for consent will be liable to pay damages to the landlord. But where the landlord has not suffered and would not suffer any pecuniary loss from the subletting made, he would be entitled to nominal damages only.[91]But if the landlord unreasonably withholds his consent after a written request has been made, the tenant incurs no liability for damages if he subsequently assigned without the prerequisite consent. In withholding his consent, the landlord must be reasonable in the sense that his reasons must be genuine in the sense of acting fairly with reasonable cause to justify his refusal. It is a question of fact for the court to decide whether the withholding of the consent of the landlord to a proposed assignment/sublease is unreasonable.

However, the landlord must be given a reasonable time during which he can consider the request and what constitutes a reasonable time would depend on the facts of a particular case. For instance, in *Stirling Astaldi Ltd. v Idowu*,[92] Hon. Justice Savage held that waiting for a period of 5 months (and the landlord keep refusing consent) was far more than reasonable in the circumstances of the case as the landlord had more than ample time to make up his mind. It is to be noted that once the landlord gives his consent he cannot withdraw.

To permit such withdrawal would be tantamount to imposition of fine in respect of consent and that had been forbidden by Sec. 3 of the Conveyance Act 1892 and Sec.159 of the Property and Conveyance Law of 1959. It is also not permissible for a landlord to withhold his consent unless the tenant pays increased rent under the lease.[93]

6. Available Remedies

I. Where consent is unreasonably withheld

If the landlord's consent is unreasonably withheld, the tenant is at liberty to assign without the landlord's consent, as he is relieved from the obligation obtaining the consent and therefore entitled to make a valid sublease without it.

II. Remedies for Breach of Covenant

The enforcement of the remedies available to the Landlord depends on whether the covenant allegedly breached-is one for the payment of rent/rates or others. The landlord can enforce the breach of covenant to pay rent/rate in three ways:

[91] Kuyoro v. Mawdew Ventures Ltd. (1972) CCHCJ 1987
[92] (1973) CCHCJ 84 at 85
[93]Olagbaju v. J.D. Alberto & Co Ltd (1979) CCHCJ 2009

Publisher *KBLSP Journal* editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

a. Distress

The right to levy distress is an ancient self-help remedy whereby the landlord can seize the goods found in the premises in satisfaction of the arrears of rent without recourse to court action. It is now an archaic remedy which has fallen into disuse[94] In Nigeria an order of court is required before a landlord can levy execution.[95]

b. Other Non-Rent Covenant

If a tenant fails to observe the non-rent covenants the landlord may sue for damages or injunction depending on the type breached. The right of the landlord to re-enter for forfeiture is strictly regulated by statute.[96] The effect of the statutory provision is that the landlord can only commence forfeiture proceedings by giving a written notice to the tenant particularising the breach and failure to comply with this requirement is fatal.[97]

c. Waiver/Relief against Forfeiture

The tenant may apply to Court for relief against forfeiture and the Court may grant if on such terms as to costs, expenses, damages, compensation, penalty, injunction to restrain breach etc. as it thinks fit. But the grant of the relief is discretionary and may be refused on grounds of misconduct especially if the tenant is incapable of remedying the breach.

7. Conclusion

The purpose of the exercise is to ensure that there is maintenance of law and order and that the rule of law is upheld. It is quite encouraging that the judiciary has always held on to it honour and dignity as an impartial arbiter throughout the relationship of Landlord and Tenant. The law of this country does not allow the Landlord unrestricted rights to invade premise that is in the lawful possession of a tenant, and throw his property away even if it is for safe keeping. The landlord must go to court and secure an order of the court to recover the premises. If he fails to do so and neglect the rule of law, the landlord would have committed an infraction on the right of the tenant and thereby exposed himself to liability in trespass.

When a Landlord resort to self-help, in a bid to recover possession of the premises in possession of a tenant, who is legally in possession, the action of the landlord does not come within the purview of the provision of the law. Possession from a tenant in lawful occupation must only be obtained by the help of an order of court made after hearing the parties. Otherwise the Landlord will be liable to damages. In the award of damages the court is entitled to keep up with the times and economic trend in the country, in particular, with the prevailing galloping inflation and the purchasing power of the naira over the past few years. When a tenant has refused to pay and is holding over after the expiration of his term, the

[94] (1973) CCHCJ 84 at 85
[95] Obasuyi v. M & K Ltd (1962) 2 All NLR part 1 118
[96] Stirling Astaldi Ltd. v Idowu (1976) OYSHC (Part 2) 187
[97] Commissioner of Lands v. Arah (1954)4 W.A.C.A. 510

Publisher ***KBLSP Journal*** editor@kblsp.org.ng **ISSN** 3027-2440 (online) (2024) Vol. 1 No. 3 April

landlord is not allowed to put the laws into his hands and throw him out without order of court.

In the words of Hon. Justice Aniagolu, JSC

> The laws of all civilized nations have always frowned at self-help if for no other reason than that they engender breaches of peace. It is no doubt annoying and more often than not, frustrating, for a landlord to watch helplessly his property in the hands of an intransigent tenant who is paying too little for his holding or keeps the premises untidy or is irregular in his payment of rents or is otherwise an unsuitable tenant for the property. The temptation is very strong for the landlord to simply walk into the property and retake immediate possession. But that is precisely what the law forbids. This is the essence of the rule of law.[98]

[98] Sec. 14 (l) Conveyance Act 1881