



M&O LAW CONSULT

NEWSLETTER – July 2019

About M&O Law Consult

M&O Law Consult is a full-service law firm located in Accra, Ghana. We have significant experience in providing legal advice and support services to clients in various sectors of the economy, including;

- Real Estate
- Construction, Infrastructure and Transport
- Litigation and Dispute Resolution
- Energy and Natural Resources

We empower our clients through expert legal advice and strive to meet their needs through superior customer service and detailed due diligence.

Key Contact



Emmanuel Mate-Kole
Managing Partner
+233 (0) 20-636-0997
ematekole@molawconsult.com



this issue

What you need to know about renting
property in Ghana

What you need to know about **renting property in Ghana**

Rental property is property from which a landlord receives payments from a tenant. Rental properties may be either residential or commercial. The rights and obligations of both the landlord and the tenant in a rental property can be found in a lease or tenancy agreement. These documents are subject to statutory and common law rules.

In this article, we will show you the statutory and common law rules that every lease or tenancy agreement is subject to, whether the agreement is an oral one or in writing, and how a landlord or tenant can use these rules to protect their interest or seek legal redress.

1) Common Law Rules

Common law rules are implied rules. That is, they are included as part of the lease or tenancy agreement although they are not expressly stated.

These include:

- a) The right of the tenant to quiet or undisturbed enjoyment of the property;
- b) the obligation not to derogate or deviate from the grant of the lease;
- c) the tenant's obligation to pay rent;
- d) the tenant's obligation not to commit waste, that is, the tenant's duty not to cause damage to the property
- e) the landlord's right to enter to view the state of repair;
- f) the landlord's duty to ensure the safety or fitness for habitation of the property

Please note that similar lease terms to the common law rules are also implied by statutes such as the Conveyancing Act. They differ in that the common law rules may be implied if there are no express term in the lease dealing with the issue. Lease terms implied by statute, will apply invariably regardless of the express terms of the contract (provided the term is absolute under statute). For example, if a landlord attempts to remove his personal liability by stating in the tenancy agreement or lease that "he shall not be

liable if the land conveyed is encumbered”, such a lease term will be void because it removes the landlord’s liability. This would go against an implied term under the Conveyancing Act which prevents landlords from removing personal liability for breaching implied lease terms.

The upside of the lease terms implied by common law is that they apply even if the lease is oral and even if no substantial payment was made by the tenant. Lease terms implied by statute, however only apply if the lease is in writing and was created for payment referred to as consideration (whether monetary or otherwise).

2) The statutory rules

The statutory rules are contained in various statutes namely:

- a) the Rent Act, 1963 (Act 220);
- b) the Rent Regulations, 1964 (L.I. 369);
- c) Limitation Act, 1972 (NRCD 54);
- d) the Conveyancing Act, 1973 (NRCD 175);
- e) the Rent Control Act, 1986 (PNDCL 138);
- f) the Courts Act, 1993 (Act 459);

These rules include:

a) Scope of application of the Rent Act

The first rule is that the Rent Act does not apply to vacant land. Therefore if you have been given vacant land to build on, the provisions of the Rent Act will not apply to you.

b) The requirement for a lease or tenancy agreement

The second rule is that for a lease or tenancy to be valid, admissible in court and enforceable, it must have the following characteristics:

- be in writing;
- signed by the landlord or by his agent who is duly authorised in writing to do so;
- stamped; and
- registered.

Below are some exceptions to the above rule. These leases are permitted to take effect without meeting the above requirements. These include:

- Leases by operation of law;
- Leases by operation of the rules of equity; and
- Leases where the lessee is in possession for a term not exceeding three (3) years

c) The applicable rent

The third rule is that the Rent Act allows a landlord or tenant of a premises or any person who has an interest in a premises to apply to a Rent Officer to assess what the recoverable rent of the premises should be. Recoverable rent is the maximum amount which a landlord may lawfully receive for the premises. For the purpose of recoverable rent, premises are classified as furnished and unfurnished, and different formulae are applicable to them. It is however noted that the Rent Officer cannot entertain an application for an assessment of a premises under very limited situations specified under the Rent Act, if an

Both the common law and statutory law gives landlords and tenants duties and rights that may be implied into a lease.

assessment has been made previously by him or the appropriate Rent Magistrate.

d) Variation of the terms of a lease or tenancy agreement

The fourth rule is found in section 18 of the Conveyancing Act and affords a landlord or tenant the right to go to court to seek a variation of the terms of a lease on grounds of unconscionability.

e) Recovery of possession of premises and ejectment

The fifth rule is that section 17 of the Rent Act allows an order of ejectment or recovery of possession to be made against a tenant on the following grounds:

- i) non-payment of rent;
- ii) breach of obligations in the Rent Act;
- iii) nuisance or annoyance to adjoining premises;
- iv) immoral or illegal use of a premises;
- v) deterioration of premises due to tenant’s damage;
- vi) notice to quit lease given by tenant;
- vii) premises required by landlord; and
- viii) effluxion of time or the normal expiration of time .

For a landlord to invoke section 17 of the Rent Act for a tenant's ejectment, he must comply with the statutory and the common law rules. In other words, under the common law, there must be an express provision in the lease for re-entry and forfeiture for all the grounds except (i) above. For a landlord to eject a tenant on grounds of non-payment of rent, the rent must be lawfully due. Rent cannot be lawfully due if it is rent in excess of the recoverable rent. The recoverable rent is the maximum amount of rent that a landlord can recover from a tenant. For example a landlord cannot lawfully recover one (1) year's rent from a tenant because the law permits the payment of only six (6) months rent in advance.

The Conveyancing Act provides that a right of re-entry or forfeiture under a provision in a lease for a breach of a lease term is not enforceable, by action or otherwise, until the landlord serves on the tenant a notice, specifying the particular breach complained of and requiring the tenant to remedy the breach, if the breach is capable of remedy, the tenant has knowledge of the fact that the notice has been served, and the tenant fails, within a reasonable time after the service of the

notice to remedy the breach, if it is capable of remedy.

g) Statutory tenant

The sixth rule is that the Rent Act protects tenants whose leases have expired but who remain in possession of the rented premises. There is however a limitation on this right of a statutory tenant in the Rent Act. It provides that the statutory tenant's right is a personal right to retain possession of the premises and it cannot be assigned nor does it pass on to his personal representatives upon his death.

As highlighted in **Dhalomal v. Pupulampu [1984-86] 1 GLR 341-366**, the court held that a statutory tenant cannot confer any interest by subletting part of his premises. When the statutory tenancy comes to an end, the sub-tenant's right automatically comes to an end unless there is some statutory protection afforded him.

f) How a subtenant can become a tenant of a superior landlord

The seventh rule is that where a rented premises has been recovered from a tenant or an order or judgment for ejectment has been obtained against a tenant, the recovery of possession or ejectment of a tenant

Certain statutory rules may still apply to a lease, even if they have been expressly excluded.

shall not affect the right of any subtenant to whom the premises or any part thereof was lawfully sublet to before proceedings for recovery of possession or ejectment has commenced. Every order or judgment effecting the above must declare whether it shall be enforced against the subtenant or not.

However, in cases where the premises was not lawfully sublet, a subtenant cannot rely on this protection. For instance, where there is a rule against subletting without the consent of the landlord and the tenant breaches this rule, then the sublet is not lawful and the tenant cannot rely on this rule.

h) Rent Control Act and the Rent Act

The eighth rule is one must elect whether they want to pursue their case under the Rent Act or the Rent Control Act. Cases like **Koranteng and ors v. Agyemang [1989-90] 1 GLR 130-133** have suggested that a landlord or tenant has the option of

commencing his action in the Rent Office or the Rent or Housing Committee. If the action is commenced at the Rent Office, the matter will progress to the courts but if it is commenced at the Rent or Housing Committee, it will progress to the tribunals. Prior to the enactment of the Rent Control Act, the Rent Act and the Court Act regulated all landlord and tenant cases. However, with the advent of the Rent Control Act, two institutions namely the Regional Tribunals and the Courts were created to try cases involving landlords and tenants.

Practice

In practice, landlords or tenants can only commence an action under the Rent Act as the institutions set up to deal with landlord-tenant issues under the Rent Control Act, namely the Rent or Housing Committee and the tribunals are no longer functional and have rendered the Rent Control Act ineffective.

i) Limitation on the recovery of rent arrears

The ninth rule is that a landlord or tenant is prohibited from bringing an action either under the Rent Act to recover arrears of rent or damages arising from the arrears after the expiration of six (6) years from the date on which the arrears became due.



j) Procedure for making complaints

The tenth rule is that the Rent Act sets out a procedure for making complaints. A landlord, tenant or any person interested in a premises can make a complaint to a Rent Officer who is required to investigate the complaints and determine same. A determination by a Rent Officer is enforceable if the Rent Magistrate is satisfied with the findings and conclusions of the Rent Officer. That notwithstanding, the Rent Act and its Regulations do not give the Rent Officer the power to decide a matter. This power rests solely with the Rent Magistrate. Enforcement must be made by a Rent Magistrate upon a referral from a Rent Officer. Therefore, the Rent Officer's determination is subject to the Rent Magistrate's assent.

In **Woode v. Dadson [1976] 2 GLR 185-189** an issue arose as to whether the jurisdiction of the Rent Magistrate was limited to claims not exceeding 2000 cedis. The court held that it had jurisdiction in all civil matters involving landlord and tenant. Therefore the jurisdiction of the Rent Magistrate in landlord and tenant cases is limitless regardless of the amount involved.

Conclusion

There are statutory and common law rules which govern every lease or tenancy agreement whether oral or in writing. Thus, it is imperative that you acquaint yourself with these rules so that at the appropriate time, you can rely on these protections or actively use them to seek redress.



Loc: House No. C7/14 Dzorzulu, Accra

P. O. Box AH 126, Achimota-Accra

Tel: +233 (0) 20-636-0997

+233 (0) 302-738-225

Email: info@molawconsult.com

Website: www.molawconsult.com