

Legal Issues Relating to the Relationship Between the Landlord and Tenant in Malaysia

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ABSTRACT

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It is crucial to safeguard the interests of tenants and landlords in their tenancy agreements to achieve the concept of justice and equality. Malaysia has not yet had a specific law to govern the relationship between tenants and landlords whereby the rights and obligations of both parties are stipulated inside their tenancy agreement. Suppose there is a breach in the contracts. In that case, the jurisdiction to settle such disputes will be referred to the relevant laws in Malaysia, such as the National Land Code (Revised 2020) (Act 828), Contracts Act 1950, Specific Relief Act 1950, and Distress Act 1951. Even so, such legislation remains vague in resolving specific issues about the entrance of parties into a tenancy agreement which will be further discussed in this study. Further discussed are the rights and obligations of both parties based on their contractual agreement and, subsequently, the proposed solutions. A comparative study is made with Australia and New Zealand on the legal issues relating to the relationship between the landlord and tenant. The findings from this study portray a need to adopt a single statute to govern the relationship between tenants and landlords in Malaysia, namely the Residential Tenancies Act.

Contribution/Originality: This study contributes to the existing literature on the legal issues relating to the relationship between landlord and tenant in Malaysia. This study also contributes to society's benefits, considering that contracts between a renter and house owner bind most Malaysian. Furthermore, the study's main contribution is to provide important information to policymakers, landlords, and tenants on their rights and obligations so that they can manage their tenancy business efficiently.

1. Introduction

Malaysia needs to be equipped with a specific law governing its tenancy system. Malaysia's tenancy system relies separately on various provisions in different laws, i.e., National Land Code (Revised 2020) (Act 828), Contracts Act 1950, Specific Relief Act 1950, and Distress Act 1951. This operation seems inefficient, and its treatment of owners and tenants is unequal. No specific law prescribes the landlord's rights, especially when facing tenant tantrums such as failing to pay rent and leaving the premises without giving any notice to the landlord (Chew, 2018). On top of that, the Control of Rent Act 1966 (Act 56) was once used to govern Malaysia's renting system, has been repealed by the Malaysian Government effective from 1st September 1997. The law protects the lawful occupation of tenants. The direct impact on the tenants because of the abolishment is a rental hike that affects low-income earners (Atumi, 2003). Hence, there are two different perspectives in which both sides face unequal treatment due to the absence of a specific law. In 2018, there was an attempt from the Government to propose the Residential Tenancy Act as a standard and specific law for house renting and guaranteeing equal rights for both landlords and tenants. However, the proposal by the Ministry of Housing and Local Government planning has yet to be tabled in Parliament.

2. Literature Review

The absence of a specific authority or body to hear any dispute was highlighted as the major weakness in regulating the relationship between landlords and tenants in Malaysia (Jiet, 2017). It was suggested that an official authority must be created to settle a dispute between the landlord and tenant. Ratna (2018) commented that the Contracts Act 1950, the Distress Act 1951, and the Specific Relief Act 1950 do not supervise the conduct between the landlord and the tenant. She further comments that in the coming years, the rental market in this country will grow, and an adequate legal framework must be prepared. This view was also proposed by the President of Persatuan Guaman Hartanah Malaysia, who agreed that the introduction of specific legislation would serve as an integrated solution involving the issue of the landlord-tenant relationship (Noh, 2018). However, the above opinions were not accompanied by the limitation of the rights that should be drafted in the new Act; it merely focused on a need to have a new Act. Meanwhile, in New Zealand, the Government has implemented various ways to improve the renting system, which benefit both landlord and tenant rights, such as improving the tenancies term which compliance with the law and increasing the number of penalties against any parties that fail to meet their obligations in the tenancy agreement (Faafai, 2019).

Since no law regulates the relationship between a landlord and tenant in Malaysia, a civil suit may be commenced in the ordinary civil court, where they can claim damages if any dispute arises from a contractual relationship. However, the processes and procedures for a civil suit before the ordinary court involve the time and money of the parties, either

the landlord or the tenant (Sufian,2012). Nevertheless, the relationship between the landlord and tenant may be evaluated from the perspective of land law. In *Sen Loon Heng v Zabon@Zaitun bt Sulaiman* [1996] 1 CLJ 775, the appellants were purchasers and descendants of those renting a portion of the respondent's land. The respondent had allowed the appellants to build four houses on the land. The appellants had continued paying monthly rentals to the respondent, and no written agreement existed regarding the tenancy. Through a written notice, the respondent had requested the appellants to deliver vacant possession of the land to its original position. The Federal Court, in this case, followed the decision in *Mok Deng Chee v Yap See Hoi & Ors* [1981] 2 MLJ 321 that a tenancy coupled with equity cannot be terminated by a bare notice to quit. Section 223 of the National Land Code (Revised 2020) (Act 828) provides that a tenancy may be created either by a written document or by word of mouth for three years or less. There is no requirement for a tenancy to be registered, known as tenancy exempt from registration. For a tenancy to have a right recognized by the National Land Code (Revised 2020 (Act 828), under Section 328, an endorsement must be made on the issue document of title.

In *Than Kok Leong v Low Kim Hai* [1983] 1 MLJ 187, the court had to consider whether or not a tenancy exempts from registration that had not been endorsed on the registered document of title was binding on a subsequent purchaser. The plaintiff purchased the land upon which the defendant was a tenant of the previous proprietor. The defendant refused to vacate the house. The court considered section 213(3) of the National Land Code and held that the oral agreement between the defendant and the previous proprietor came under section 213 of the National Land Code and was a tenancy exempt from registration. It was also held that the tenancy was not binding on the plaintiff since there was no endorsement on the registered document of title. In *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719, if the tenant fails to make an endorsement of a tenancy will leave him to get protection under the law of contract only. Accordingly, if the tenant fails to pay rent, the landlord may resort to the law of contract (Sufian, 2012).

3. Methodology

This study comprises two parts that would draw upon primary and secondary data for a more in-depth understanding of the area of research. This research adopts a socio-legal research design with a qualitative methodology. The details of the methodology are described and justified below.

The qualitative methodology was selected for this research as it visualises the most appropriate way to obtain pertinent data to answer the research questions above. Silverman (2010) opined that the qualitative method would offer a flexible option for gathering information from the respondents and secure a deeper understanding of the legal issues in the study on the legal issues pertaining to the relationship between a landlord and tenant. It will be extensively applied as it focuses on applying laws from different countries regarding the rights and liabilities of tenant-owner relationships involving house renting. The qualitative approach allows the researchers to discover and analyse the primary materials, such as legislations and case law from Malaysia, Australia, and New Zealand, whose outcomes are essential to make a comparative study and guidance throughout the journey of this research.

4. Result and Finding

4.1. Legal Issues Surrounding the Landlord and Tenant Relationship Involving House Renting in Malaysia

4.1.1. Knowledge and Experience of Tenants of the Tenancy Rights in Malaysia

Housing affordability has been such a disputed issue among Malaysians as many people nowadays find it hard to own a house due to the increase in house prices, which indirectly led to the growing numbers of renting culture among Malaysians (Fuster et al., 2019). Nevertheless, there is some inefficiency in renting a house, especially on the part of a tenancy agreement. Huang (1975) views that most landlords exploit their tenants by citing a high rental price, which keeps them in perpetual poverty, and unfair practices such as short-term leases, pin money, and harsh contracts where landlords can take advantage of the tenancy agreement when the tenant is among students, i.e., university students. These students still lack knowledge and inexperience in understanding the terms of the tenancy agreement and the legal relationship they established once the tenancy agreement was signed. Inexperienced students then have to accept the tenancy agreement as it is based on take-it or leave-it. This causes an imbalance in their tenancy agreement as only one party gets the benefits. In contrast, the other party was heavily burdened under the agreement (Razak et al., 2017).

4.1.2. Satisfactory and Acceptance Level of Tenants Upon Their Tenancy in Malaysia

In the tenancy context, the tenant's satisfaction with the terms of the tenancy agreement is also one of the main factors that attracted the tenant to sign the tenancy agreement. In constructing terms in the tenancy agreement, it is essential to encode the name of the parties involved, details of the property, the payment period, and even any special terms that govern the liability of the tenant and landlord. A study by Mohd Adnan and Tey (2008) investigated the tenant acceptance of their tenancy terms in two office buildings in Kuala Lumpur, Malaysia, which be labeled as building A and B. Based on the study, 77% of the respondents still agreed that the period of tenancy, which is less than three years, is still ideal for them. Meanwhile, 23% of the respondents express that the ideal tenancy period should be from three to five years. Thus, 60% of the total respondents required the review period of their tenancy to be improved, and 55% of the total respondent demanded improvement over the repair and insurance. The respondents' request is to ensure that all the terms in the tenancy agreement are well defined and satisfy both landlord and tenant to know their responsibility upon the property.

Another study by Mohd Nor et al. (2020) investigated the tenant's low and medium-cost satisfaction in a High Residential Building in Klang Valley using nonparametric convenience sampling. The studies' results stated the different satisfaction results from the residential in both classes. The low-cost resident is most satisfied with the facilities provided with 2.85 means, while the medium-cost resident is at 3.45. mean score. Therefore, the advancement of the housing trend has significantly impacted the tenant's level of satisfaction.

4.1.3. Infringement of Rights and Obligations

In a tenancy agreement, some clauses stipulate the rights and obligations of tenants and the landlord. However, in many cases, it is undeniable that there are infringements to

these rights, may it be from the tenant or the landlord. There are many situations where landlords have to pay for the problems caused by their tenants. If the tenants do not pay electricity or water bills upon the termination of their tenancy agreement, the landlords are accountable for paying for them. Likewise, when tenants refuse to pay rent, the landlord has to bear the losses, and evicting the tenant can take a long time, as eviction laws protect the tenants (Sundram, 2020).

Most landlords in Malaysia practice self-help due to the non-existence of a specific mechanism for handling disputes between landlord and tenant other than a court. Self-help enables them to enforce their contractual rights quickly and efficiently without resorting to the judicial process (Brandon et al., 1984). Self-help is a step taken to prevent wrongs by one's action without resources for legal proceedings. However, it is considered controversial because the party amounts to taking the law into one's own hands. Usually, landlords who draw the concept of self-help in evicting tenants argue that the tenant was violating the tenancy in some manner, thus making the landlord entitled to possession. However, the remedy of self-help does not apply in Malaysia. In the case of *Er Eng Hong & Anor v New Kim Eng v Tiap-Tiap Pemegang Yang Menduduki Atas Sebahagian Tanah Yang Dikenali Sebagai HS (M) 2162 PTD 4403 Mukim Benut, Daerah Pontian [2001] 1 CLJ 289*, it was decided that the property owner can only seek to enforce his right to recover his property from the occupier through court action.

4.2. Comparison of Tenancy Systems in Malaysia, Australia and New Zealand

Malaysia, Australia, and New Zealand have different kinds of tenancy systems that have been applied respectively in their countries. Each system has its unique approach to governing tenancy transactions. This discussion can be divided into three matters: dispute settlement mechanism, authority involved (Housing Official), rights and obligations, and remedies given in the respective governing statute for each country.

4.2.1. Dispute Settlement Mechanism

When a dispute occurs between landlord and tenant, each country has its ways of settling its dispute, whether through court or tribunals. In Malaysia, no specific tribunal can handle landlord and tenant disputes. According to Sufian (2012), this leads the matter to be resolved in court proceedings by referring to the National Land Code 1965, Distress Act 1951, Contract Act 1950, and Specific Relief Act 1950, whichever is relevant to the dispute between the landlord and tenant.

Meanwhile, Australia has different Residential Tenancies Acts based on the region where the citizen lives, and each Residential Tenancies Act has legislation that differs from each other. In this paper, we will only focus on two provinces in Australia regarding their tenancy act, New South Wales: Residential Tenancies Act 2010 and Queensland: Residential Tenancies Act 1994. For New South Wales: Residential Tenancies Act 2010, the dispute settlement mechanism can be found in Part 9 of the Act, which states the Powers of the Tribunal. Section 187 (1) of the Act, 176 states that the Tribunal, on application by a landlord or tenant or other under this Act, or in any proceedings under this Act, may make one or more of the following orders. For Queensland: Residential Tenancies Act 1994, the dispute settlement mechanism can be found in Chapter 5 of the Act titled "Resolution of tenancy issue."

In New Zealand, Part 3 of the Residential Tenancies Act 1986 provides the existence of Tenancy Tribunals. Section 67 of the Residential Tenancies Act 1986 comprehensively specifies the constitution of the tribunals, such as the appointment and qualification of the Tenancy Adjudicator. Section 77(1)(a)-(b) grants the jurisdiction of the Tribunal whereby it has jurisdiction to determine any dispute between a landlord and a tenant or between the guarantor of a tenant and relates to any tenancy to which the Act applies or to which this Act did apply at any material time. Thus, any dispute shall be referred to the Tenancy Tribunals in New Zealand as a dispute settlement mechanism.

4.2.2. Authority Involved (Housing Official)

Each legal system may have some advantages and deficiencies, or in other words, there are differences in each legal system. This fact is unvaried to the related authority bodies or housing officials in these three countries - each has its own, and they may or may not differ.

In Malaysia, Section 2 of the Local Government Act 1976 (Act 171) provides that the enforcement of authority in managing the housing issue was under the authority of the local Government, such as the city council, municipal, or district council. However, the scope of the local Government as a Housing Official is only to the extent of controlling and regulating the building quality and ensuring that the dwellings to be rented are under safe conditions during their construction period. There is no enforcement authority initiated to overcome the issue of the tenancy system, such as racial discrimination in renting since the non-existence of a proper tenancy law ([Vijenti, 2020](#)).

Meanwhile, Australia has many provisions that provide whom the housing authority is involved in tenancy agreements. The Residential Tenancies Act 2010 stipulates that the Aboriginal Housing Office may terminate a social housing tenancy agreement of the aboriginal people, provided that alternative housing premises are prepared for the tenants. Besides, the Ministry of Business, Innovation, and Employment in New Zealand regulates compliance with the tenancy laws. The team that supervises and enforces compliance at the ministry is the Tenancy Services Compliance and Investigations team. This team proactively visits property management companies and the landlord. If the tenants have breached their obligation to landlords, the landlords should take action at the Tenancy Tribunal.

4.2.3. Rights and Obligations

Each country has its formula to ensure fair and equal treatment for landlord and tenant in managing a better tenancy system. One of the keys is through clear principle between the right and obligation governing both landlord and tenant.

In Malaysia, the rights and obligations of the landlord and tenant are provided under Section 5(1) of the Distress Act 1951, which gives the right landlord to claim for outstanding rental from the tenant. In addition, Section 7(2) of the Specific Relief Act 1950 obligated the landlord to obtain a court order to evict the tenant. Other than that, the parties will primarily refer to their tenancy agreement for the parties rights and obligations. These rights and obligations shall bind both parties and be enforceable under the Contracts Act 1950.

Meanwhile, Australia, its tenancy system is varied according to its provinces. In South Wales, the right of entry by the landlord to the premises is different to New Zealand, where according to Sec 57 Act 2010, the landlord in South Wales can apply for access from 8:00 am to 8:00 pm to access the tenant premises. In Queensland, under Sec 109 of Queensland Residential Tenancies Act 1994, the Act does not mention the timeline to allow for entry, as the landlord can only enter the premise with a practical purpose, and must provide entry notice to the tenant.

Meanwhile, Section 48 of the Residential Tenancies Act 1986 in New Zealand stipulated the landlord's rights towards their rented premises. Section 48(a) provides that the landlord, among other things, generally cannot freely access the premises during the tenancy period without the tenant's consent. However, Section 48 (2) provides that the landlord can make entry to the premises without the tenant's consent and must be at any reasonable time between 8 am to 7 pm on any day and produce a notice of entry 48 hours prior to entry. Moreover, Section 45 (d) (i) and (ii) of the Act also stipulates the landlord's responsibilities toward their rented premises *inter alia*; the landlord is obliged to reimburse the tenant with a reasonable amount of money to repair the premises that are in the state of disrepair where it could amount to a breach of the tenancy agreement which likely to cause hurt to any person. As for the tenants' obligations, Section 41 states that they shall be responsible for the action omitted by anyone who came into the premise with the tenant's permission and caused damage to the property and whether it was caused by intention or carelessness.

4.3. Remedies

The remedies available in handling the dispute or breach of an agreement between landlord and tenant are divergences between Malaysia, Australia, and New Zealand. In Malaysia, since there is no specific legislation on residential tenancy transactions, the available remedies can only be found in numerous Acts such as National Land Code 1965, Distress Act 1951, Contract Act 1950, and the Specific Relief Act 1950. For example, Section 7 (2) of the Specific Relief Act 1950 laid down the remedy for the landlord through a court order to recover the possession of his property from the tenant. Furthermore, Section 74 of the Contracts Act 1950 provides for the innocent party to claim remedies against the party in default for breach of contract. Such as unliquidated damages, i.e., compensation for loss or damages caused by the breach of contract.

Meanwhile, in Australia, the available remedies can be demonstrated by referring to the New South Wales Residential Tenancies Act 2010. By virtue of section 187(1) of the Act, the landlord or tenant may apply for orders from the Tribunal prescribed within the Act, which are more specific orders that the tenant or landlord can claim. In Queensland Residential Tenancies Act 1994, the tenant is to apply to a tribunal if the lessor fails to comply with his maintenance obligation prescribed within the Act, and the failure can be remedied.

In New Zealand's tenancy system, the Residential Tenancies Act 1986 of New Zealand explicitly provides numerous orders of a tribunal that can be claimed by tenants and landlords within the Tribunal's jurisdiction. For example, Section 48(1)(f) provides for either party to claim the court order to vary the tenancy agreement or set it aside if such agreement appears harsh or unconscionable. Furthermore, Section 78(1)(c) allows a party to seek from the Tribunal an order that a party pay money to the other party or to deliver any specific chattels to any other party. Interestingly, a party may also apply for

an order of declaration from the Tribunal whether as to the status of any premises, of any agreement, or the rights or obligation of any party (Section 78(1)(a)).

5. Discussion and Recommendations for the Tenancy System of Malaysia

5.1. Introduction of a Specific Statute Relating to Landlords and Tenants.

A specific statute relating to the landlords and tenants relationship is essential to provide comprehensive and all-inclusive legislation that will put all these issues under a single umbrella, ultimately ensuring there are provisions to protect and preserve the landlords' and tenants' rights from loopholes in the existing laws. The Act should provide the rights and obligations of the landlords and tenants to protect the rights of landlords and tenants in the best interest of all involved by providing a standard tenancy agreement.

5.2. Formation of Dispute Settlement Mechanism

It is recommended that Malaysia's Government establish a tribunal for tenancy disputes. The non-existence of a tribunal relating to tenancy disputes in Malaysia is one of many people's problems in tenancy matters. As for the current practice, it can be seen that the only way to settle the dispute is by bringing the matter to the court to settle every tenancy dispute or problem occurring in Malaysia. The Government of Malaysia must bring this matter into the parliament to establish a tribunal for tenancy matters. There are two significant reasons why Malaysia should impose a tenancy tribunal. The first reason is that tribunals are set up to be less formal, less expensive, and a faster way to resolve disputes than by using the traditional court system. Compared to a court, a tribunal can resolve the matter faster since fewer procedures are being used than have been used in the court. Furthermore, the adjudicators, the Tribunal's members who make the decision, usually have special knowledge about the topic they are asked to consider. Judges, however, are expected to have general knowledge about many areas of law, not particular expertise about the law in the case they are hearing.

5.3. The Inclusion of Express Rights and Obligations in the Statute

In view of the rights and obligations, New Zealand and Australia have a more structural system in presenting the rights and obligations of the tenants and landlords through their codified provision, which Malaysia could take as an example in enacting. In Malaysia, the rights of the landlord to make an entry into their rented premises is stipulated by virtue of section 7 of the Specific Relief Act 1950, and apart from the time-consuming and costly to get an order from the court, this provision does not specify the timeline which the landlord could enter the premises. Therefore, Malaysia should impose the timeline for entry by the landlord into their rented premises in the new tenancy Act. Apart from that, there has been dissatisfaction among the landlord in Malaysia over the newly amended section 41(2) of the Copyright Act 1987, which make them vicariously liable for possessing infringing copies caused by the tenant in the rented premises. Here, it had infringed on the landlord's right as the innocent party and was subjected to the fault caused by the tenant. Therefore, the new tenancy Act should clearly distinguish between the tenant's obligation and the landlords towards the rented premises. For instance, a specific section exempted the landlord from liability for any fault caused by the tenant, such as possessing dangerous substances in their rented premises, producing illegal substances, or any illegal activity prohibited under Malaysian law.

5.4. Establishing of Specific Body to Curb Discrimination Involving Landlords and Tenants

Considering that Malaysia is a multi-racial country, it is recommended that there is a need to table a specific provision in the Residential Tenancies Act to regulate racial issues, which will focus on curbing racism landlords frequently practice in selecting renters. Additionally, a specific body, such as what has been administered by Australia, which is the Anti-Discrimination Board, should be created in Malaysia (Anti-Discrimination Act 1987 No 48. Part 8). The introduction of the Board will ensure no exploitation or manipulation given by either tenants or landlords. Consequently, the practice in New Zealand and Australia should be a benchmark to improve Malaysia's tenancy system.

6. Conclusion

The landlord and tenant issues in Malaysia, mainly the residential, rely on the principle of common law and equity in the absence of a specific statute. It is in the best interest of the landlords and tenants to regulate the relationship. Furthermore, as Malaysia is moving towards accessible justice for its people, specific proactive steps must be taken to regulate the relationship between a landlord and a tenant through a proper law, particularly concerning private residential tenancy. A statute capable of maintaining a balanced bargaining power between a landlord and a tenant provides a proper out-of-court dispute resolution, controls the landlords from abusing the tenants, and prevents the tenants from manipulating the issues of eviction from a tenanted property as against their human rights. The practice in Australia and New Zealand may be a benchmark to improve our law on landlord and tenant, particularly on a private residential tenancy.

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Conflict of Interest

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