

LANDLAW AND LANDLORD AND TENANT LAW

COURSEWORK

1) 1.0 Detail the possible rights and obligations of both Tenant and Landlord. Use examples and case law. Be as comprehensive as possible as to the possible options.

Relationships between landlords and tenants are governed by several statutes and court rulings. However, the most important source of information is the rental agreement, whether it is written or oral. Some landlords prefer oral agreements; however it's most common for them to require your signature on a written lease.

When a rented property is leased from a landlord for residential use, the arrangement is called a 'residential lease'. Where as if a business leases a rented property, the agreement for the arrangement is called a commercial lease.

Reference 1

There are many similarities between the two types of leases, however many differences too. The law often regulates the relationship between a tenant and a landlord under a residential lease. These laws are designed to provide basic requirements for the condition of the rental property, and to protect tenants from dishonest landlords. On the contrary, commercial leases are viewed as being contracts between knowledgeable business people, whom therefore should be able to negotiate the terms of the lease to their respective satisfaction. They are able to contract anything they wish, resulted from 'freedom contract', as long as its legal and the courts treat it as reasonable if challenged. Subsequently, there is very little governmental protection, unlike in residential arrangements.

An obligation is a promise to perform in a particular way in the future. All legal binding relationships consist of a series of these obligations, for example in the arrangement between landlords and tenants.

The promises that are made between a landlord and tenant define the nature of the tenancy. This is achieved by setting out various rights and obligations that are agreed by both parties. A right is the opposite of an obligation.

Reference 2

Occasionally, landlords may regard certain terms in the agreement to be so imperative that the term is to be considered as a condition, rather than just an expressed promised. Remedies for breach of conditions are a lot more severe than any other breach and so the courts generally interpret most obligations to be considered as a covenant, unless expressly stated otherwise.

These remedies usually result to damages where the losses incurred are quantifiable by money. However, if this compensation isn't significant enough to the breached party, the court may impose a specific performance to be carried out or an injunction. Neither of the

latter two is favored as a remedy, as its considered 'slavery' to enforce someone to do something they don't want too.

Promises made between the landlord and tenant about contractual obligations and rights, occur as a result of an express agreement between the two. However, not every obligation arises from a promise made by one of the parties; these are implied contractual obligations and rights.

Express covenants for a landlord in a lease will commonly include a covenant for quiet enjoyment; a covenant to repair; a covenant to insure; and a covenant permitting the tenant to renew the tenancy.

It is in the interest of both parties attached to the tenancy agreement, to express a covenant to insure the premises. This although, is not always the case.

With shorter held commercial leases, it is less usual to express a covenant on whom it is responsible to insure the premises. This is because it's in the landlord's interest that the building is protected, as the financial loss that could be encountered will fall greatly upon him if damaged. Consequently, the landlord will want to ensure the tenant doesn't do anything to stimulate that could cause the insurance premium to increase or invalidate the policy, e.g. like storing flammable goods etc and so there will most certainly be covenants on what the tenants can or can't do, to cause this.

Landlords have the ability in fixed term tenancies, to promise whether to offer the tenant the grant of another, when the first one expires.

If this has been granted, the landlord cannot refuse another term, if the tenant wishes to continue. With this expressed obligation, there are benefits to both the landlord and tenant; effectively, the tenant will have a guarantee that the lease will be renewed if he wishes, and the landlord will have the benefit of making the property in question more desirable to be leased. **Reference 3**

Renewal is automatic if the landlord expressly stated the tenant can continue, however, it is based upon two factors. This is to protect landlords from 'bad tenants' and their ability to abuse the obligation and continue with a new tenancy. Tenants therefore can only continue if a) the tenant gives the landlord notice that they wish to renew the lease and b) the tenant did not breach any of the covenants at any time in the lease.

As stated previously, not all obligations in a tenancy agreement arise directly from expressed promises made between the landlord and tenant. The law implies certain obligations into the tenancy, which rightfully provide basic protection for both, where express terms fail to cover.

Covenants for a landlord implied by the common law include a covenant for quiet enjoyment; a covenant not to derogate from the grant; and an implied contractual duty of care to keep the common parts in repair

Reference 4

As mentioned before one obligation of the landlord which can be expressed and most certainly implied, is a covenant for quiet enjoyment. The landlord must agree to give the tenant quiet enjoyment of the premises. Meaning the landlord won't unduly interfere with the tenant's use of occupation, as long as the provisions of the lease aren't breached. If other tenants in the building are disturbing you, the landlord again has the liability to see that you are protected from the tenant's wrongful behavior (*Section 26 Tenant Protection Act 1997*).

The landlord may neither interrupt utilities to the tenant, unless subject to conditions, or from genuine repairs, construction, or emergency. The case which helps distinguish this is that between *Kenny v Preen (1963)*. Here a landlord sent three threatening letters, banged on the door and shouted abuse at the tenant. This was held to be a breach of covenant for quiet enjoyment. **Reference 5**

Usually in a written agreement, there is usually an express covenant delegating who is responsible for the repairs.

The term repair itself is difficult to define, but it suggests repairing a building so to leave it exactly as it was before it was damaged. After all it's impossible to truly repair the building, once been affected due to misuse, weather and neglect. Buildings like humans have a limited life span, where as age increases their conditions will deteriorate.

Reference 6

Parties are free to delegate them upon whoever they agree and usually covered in the tenancy by an expressed covenant. However, in the absence of any express agreement, no one is responsible to do repairs. This is extremely uncommon, as it is included in most leases.

Leases can contain full repairing insurance (FRI) as a term of the tenancy, where the landlord is responsible for all repairs and insurance for the interior and exterior of the building. Thus the rent is consequently higher to compensate all the repairs the landlord is liable for. Tenancies which include only Internal Repairs and Insurance (IRI) leave the landlord only responsible for the exterior of the building and the tenant with the responsibility for repair in the internal part of the premises.

Nevertheless, it's the landlord who usually draws up the agreement and so it's not unusual that the responsibilities lean more towards the tenant's side.

The length of the lease usually impacts on whom the responsibility of the repairs lie with. As a general rule, the shorter the lease, the more likely the landlord will accept responsibility. However, with longer leases, tenants are usually willing to take the liability, as they benefit directly with the premises in good condition in the long run.

A further implied covenant for a landlord, not to derogate from grant, is with regards to easements. The landlord must not do anything which prevents the tenant from exercising their right, e.g. if they have a right of light, the landlord may not do anything to prevent the light the tenant is entitled too, by building something which consequently blocks it.

Additional obligations the landlord may have are to give proper receipts for any moneys received from the tenant; keep proper records of rent received relating to the tenancy;

provide and maintain locks to ensure the premises are secure; as well as to provide a copy of the lease agreement;

Like landlords, tenants too have express covenants which are agreed by the landlord and fixed in the tenancy agreement. These covenants can include factors such as a covenant to pay rent; a covenant to pay taxes and a covenant prohibiting assignment and/or sub-letting. Covenants such as paying rent and taxes are also implied covenants, so if there not expressly stated, the law will enforce it anyway.

Reference 7

In the absence of an express covenant to pay rent, it's most certainly implied by the law. This is because although the payment of rent is not essential to create a tenancy, it's usually the intention of the parties. Without it, there is no business efficacy. It is even held that the representative of a tenant deceased is liable to pay remainder of rent, until a notice to quit is given. The case between *Youngman v Heath 1974* establishes this.

According to the Local Government Finance Act, 1992, unless expressly stated otherwise in the agreement, the tenant is also impliedly legally responsible to pay taxes and rates, along with rent.

Reference 8

There are further implied tenant covenants for a commercial lease. These are a covenant to allow the landlord entry and a covenant to use the premises in a 'tenant like manner'

As I pointed out before, it's the landlords express and implied covenant for the tenant's right to quiet enjoyment. It's therefore considered trespassing, if the landlord enters without permission. This only applies however, if the tenant has exclusive possession. On the contrary, if the tenant is not covenanted to be liable for repairs, the landlord has the right to entry to carry out the work they're covenanted to do.

The landlord may also enter if there has been a breach of covenant from the tenant. This includes if the rent remains unpaid 14 days after its due; in any covenant in the lease is not performed or observed; or if the tenant becomes insolvent. ***Reference 9***

A further covenant for tenant is to use the premises in a 'tenant like manner'.

It's very difficult to define exactly what behaving in a 'tenant like manner' is, although it does suggest the tenant must perform everyday tasks that a reasonable tenant would. For example, if the tenant leaves the property empty for a while, he must turn off the water and empty the boiler, and mend the electric when it fuses.

Reference 10

There is only one implied condition in a tenancy agreement which had been enforced by the common law. This is a condition for 'fitness for human habitation at the commencement of the tenancy imposed upon the landlord'.

Reference 11

A case to distinguish this is the case between *Collins v Hopkins 1923*, where the landlord failed to disinfect the premises after it had been habited by a tubercular patient.

Reference 12

If the tenant breaks the lease, the landlord has a variety of remedies available to them. They may either opt to be compensated for distress, damages, or terminate the lease.

As a tenant, there are rights in which can be demanded in respect to any condition that materially affects their health and safety. By renting the property, its common law that the landlord guarantees that the premises will be a fit place to work/ live etc.

If expressly stated otherwise the landlord does not owe a duty of care to make repairs if tenants cause the unsafe and unhealthy condition through their negligence, abuse or accident.

If the landlord refuses to make repairs needed to protect the tenants health, safety or security, the following procedures entitled to you, required by law, may be the following: to terminate the lease; have the problem repaired and deduct the cost of repair from rent; or the ability to file a suit to force the landlords to make the repairs.

As a tenant, most landlords require a security deposit to be paid, to recover any repairs needed when you move out or to cover your failure to pay the last month's rent. However by law, landlords cannot refuse to return the deposit without a valid reason. For example, they may not charge and retain this deposit for normal wear and tear on the premises.

The tenants therefore have a right to claim this deposit back at the end of lease.

These are just a few rights the tenant is entitled to, relating to a commercial lease.

2) 2.0 Explain what rights the landlord and tenant have at the end of the lease.

The state only interferes at the end of a lease. If the tenant wants to continue with the lease, the 1954 Landlord and Tenant Act gives certain rights to claiming it back.

The lease may end because their term has expired and the parties have agreed not to renew the lease.

A lease may also end if it cannot continue because of factors which are at fault of either the landlord, or tenant. The word used to describe this is 'frustrated' and may occur due to a major catastrophe, e.g. a natural disaster.

Although the state interferes very little with commercial tenancies, there are Acts which provide frameworks for both landlords and tenants in business tenancies. One is the Landlord and Tenant Act 1954. Part 2 of this Act deals with renewals and terminations of business leases. The main features of this Act are unchanged, although the workings have modernised, making the renewal and termination of the business tenancies quicker, easier, fairer and cheaper. The detailed changes on the workings of 1954 Act, take affect from 1 June 2004.

Reference 13

The 1954 Act broadly gives business tenants security of tenure. They give tenants a statutory right to remain in their business premises when their lease ends and to seek new tenancy. This is especially accommodating if the landlord refuses to obligate the tenant a grant of another tenancy when the first one expires, in the agreed tenancy.

Unless the tenant fails to pay rent or breaches some conditions of the tenancy, the landlord is only able to bring the tenancy to an end, by giving the tenant notice. The tenant may neither end his tenancy before the agreed expiry date, unless he has been in occupation as a tenant for at least a month, and gives notice to quit in accordance with the terms of his tenancy.

When the notice of termination has been received, the tenant has the right to apply to the court for a new tenancy and the court must grant one, unless the landlord can show that he is entitled to possession of the property on one or more of a limited number of grounds. These include if the tenant was persistent in delaying paying the rent when it became due; that on the termination of the current tenancy the landlord intends to demolish or reconstruct the building; that on termination of the current tenancy the landlord intends to occupy the holding for the purpose of a business to be carried out by himself, or as his residence.

Reference 14

If a tenant does commit themselves with a lease without the security of tenure, significant legal rights cannot apply. For example, the tenant has no right to stay in the premises when the lease terminates; unless another lease is offered by the landlord, you have to leave; and you will be unable to claim compensation for the loss of your business premises, unless the agreement expressly states otherwise.

Reference 15

Word Count: 2,661

3.0 References

- Reference 1:** www./real-estate-law.freeadvice.com/landlord_tenant/residential_lease_commercial.htm
- Reference 2:** Garner pg 53
- Reference 3:** Garner pg 92
- Reference 4:** <http://www.lawyers-bc.com/comleas/comintro.htm>
- Reference 5:** Garner pg 59
- Reference 6:** Garner pg 101
- Reference 7:** Garner pg 52
- Reference 8:** Garner pg 66
- Reference 9:** Copy of lease (Appendix 1) pg 28
- Reference 10:** Garner pg 111
- Reference 11:** Garner pg 54
- Reference 12:** Garner pg 54
- Reference 13:** Business Tenancies: new procedures under the Landlord and Tenant Act 1952 Brochure
- Reference 14:** Business Leases and security of Tenure Brochure pg 33
- Reference 15:** Business Tenancies: new procedures under the Landlord and Tenant Act 1952 Brochure Pg 25

4.0 Sources

- www.ocba.sa.gov.au/tenancies/landlords/07_rights.html
- www./real-estate-law.freeadvice.com/landlord_tenant/residential_lease_commercial.htm
- www.lawyers-bc.com/comleas/comintro.htm
- Tenant Protection Act, 1997
- Business Tenancies: new procedures under the Landlord and Tenant Act 1952 Brochure.
- Business Leases and security of Tenure Brochure
- Landlord and Tenant, Simon Garner & Alexandra Frith, Third Edition
- Copy of lease (Appendix 1)

