

Legal Alert: **Landlord & Tenants Myths**

Reactions To Last Newsletter

NSITF & 5 YEAR RULE

A consistent reaction to my last Newsletter worthy of immediate attention and comment is the question of whether existing contributors to the National Social Insurance Trust Fund (NSITF) have the right to now choose their preferred Pension Fund Administrator (PFA) independent of NSITF whilst their previous contributions to NSITF can only be transferred Five (5) years after the commencement of the Pension Reform Act 2004 (Pension Act).

I looked to a better resolution of the above question at a Pension Seminar organised by KPMG Professional Services and Capital Alliance Nigeria. The view of the acting Director General of the National Pension Commission (NPC) and most of the Facilitators at this Seminar to the above question was to the effect that contributors to NSITF were not obligated by the Pension Act to continue to make their pension contributions to NSITF; and that only their previous pension contributions were caught by the 5 year rule in Section 42(3) of the Pension Act.

The collective bias of many of us may be the result of the inefficiency of the NSITF scheme ? due to government and political interference ? and the phobia of contributors to remain with any structure of NSITF.

I presently cannot lend legal support to the above interpretation of NPC or other Pension Practitioners because Section 42(3) of the Pension Act provides as follows: ?Any contributor or beneficiary under the NSITF Act shall at least 5years after the commencement of this Act select the Pension Fund Administrator of his choice for the management of the pension fund standing to his credit.? The underlining is mine.

Nowhere in the above provision or in any other Section of the Pension Act is the Contributor to an NSITF scheme expressly permitted to elect to choose a PFA different from the one appointed by NSITF. This may be the reason why NSITF is allegedly circulating notices to corporate contributors to continue to forward their contributions to it. Neither is there any express provision in the Pension Act requiring a Contributor to remain with NSITF ? though I tilt towards this interpretation and will not personally join, as presently constituted, an NSITF PFA when one is appointed.

It is therefore recommended that the NPC should collate the above and other grey areas from which a harvest of litigation can arise and recommend to the National Assembly amendments to the Pension Act before its actual implementation date, which is expected to be 1 st January 2005.

Legal Alert: Landlord and Tenant Myths

Many recipients of my last month's Newsletter requested for my January 2004 Newsletter on Mergers and Acquisitions as a result of the Central Bank of Nigeria (CBN) new policy that Nigerian Banks should have a minimum capital base of N 25Billion. This is to be achieved by the Banks either increasing their shareholders funds internally or by entering into mergers and or acquisitions with other Banks. But where will anyone be if he/she/it is lawfully or unlawfully evicted from his/she/it's home or where he/she/it comes on business? This Alert is therefore on that question.

I have heard mentioned some legal positions governing Landlord and Tenant relationship. Some include:

- A Sub-Tenant, put into possession of a property, with or without the Landlord's consent is not afforded any protection under the Law, as the Sub-Tenant is not legally recognised.
- A Tenant in arrears of rent is not obligated to pay his arrears of rent or any more rent once he is served with a Notice to Quit or a Notice of the Landlord's Intention to apply to a Court of Law to repossess the property.

Applicable Law With Key Provisions

The applicable Law in Lagos State ? other States in the Federation of Nigeria have similar provisions ? are:

- The Recovery of Premises Law, Vol. VI, Cap 118, 1973 for official premises, and residential premises in highbrow areas like Ikoyi, Victoria Island, Ikeja GRA, Apapa GRA, etc.
- The Rent Control & Recovery of Residential Premises Law, 1997.

Sub-Tenants

Section 36(1) of the above mentioned latter legislation defines a Tenant, recognised and protected under this Law to include ? ?. 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 thereof?. Underlining again is mine.

Length of Notice to Quit

A major area from which a dispute can arise is the length of Notice that a Landlord must give to a Tenant or Sub-Tenant and proof that that notice was personally delivered to the Tenant.

Firstly, the length of Notice that a Tenant must be given before he can be requested to vacate possession of a property is dependent on the length of time for which he/she/it pays rent. So that a weekly Tenant is entitled to a week's notice. A monthly Tenant is entitled to a month's Notice to quit as is a Tenant that pays his rent quarterly entitled to a quarter's notice. A Tenant paying rent half yearly or yearly is entitled to a half-year's notice should the Landlord seek to repossess his property.

Special mention must be made that a Landlord and his Tenant (the parties to the contract) can by their contract vary the period of the notice to a lesser or more period provided that this is clearly stated in their contract.

Also, the service or proof of the delivery of a Notice to Quit on a Tenant can be very contentious. Because of its technicality -- to prevent fraud and abuse by the Landlord -- I always recommend that where the Tenant cannot be found or is evading service of the Notice, the Landlord can paste the Notice at the entrance of the property. To seal this process, it is further advised that a picture of the pasting of the Notice be taken and an Affidavit of Service sworn by the person who pasted the Notice with the picture attached to the Affidavit.

Mandatory 6 Months Notice To Quit Or Only 7 Days Notice?

Some Legal Practitioner have argued that a Landlord, desirous of not renewing a tenancy, is only required to serve on the Tenant a seven days notice of the Owner's intention to apply to a Court of Law to recover possession of his property. This argument is more a matter of inherited practice than of substantive Law.

For example, Section 15 of the Rent Control and Recovery of Residential Premises Law provides that ?Notices referred to in Section 14 (on length of Notice) may be given at any time prior to the date of termination of current term of tenancy but they shall not be effective if the time between

the giving of the notice and the time when the tenancy is to be determined is less than the respective periods set out in subsection 1 of Section 14?. Words in brackets are mine.

It is conceded that the interpretation that a Legal Practitioner may place on a legal provision is dependent on which party he represents. For the Landlord, I never recommend this test method, as it is open to protracted arguments of what the correct position is. It is instead preferred that legal technicalities are reduced to the barest minimum through compliance with conditions precedents.

No Payment After Notice To Quit

Many Tenants have represented to me that they were advised by their Legal Counsel not to pay any rent once a Notice to Quit is served on them. The claim they were told by their Legal Practitioner that this is the position of the Law.

The above proposition is very wrong in Law; it may be prudent in the short term as it allows the Tenant to get together funds to secure an alternative accommodation. A quick scan of the Rent Laws shows clearly that a Landlord is entitled and permitted to claim and recover from a Tenant, whether a Notice to Quit is issued or not, all arrears of rent owed including the excess period that the Tenant may have stayed which is called ?mesne profits?.

Shot from The Hips With Eyes Closed

The era of disrespect and disregard for the Law and due process is returning and more vigilance is recommended in our protection of our individual rights. Instances where the rights of Tenants and Sub-Tenants have been abused through unlawful eviction are on the increase. Parties and their Legal Counsel no longer see a suit for damages for unlawful eviction and or a petition for professional malpractice as a deterrent not to engage in unlawful and unethical practices. This is because the procedure for arriving at a decision by the statutory bodies is cumbersome and time consuming.

I therefore recommend that whilst it is nice to believe that the other party will always act professionally and properly, it may be equally essential to take prevent legal action when under pressure from the above issues.

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October, 2004.