

Full Length Research Paper

Eviction of tenant as practice in property management in Ilorin metropolis, Nigeria

Ukpeje Felix* and Ibitoye Cyprian

Department of Estate Management, Western Delta University, Delta State, Nigeria. *Corresponding author. E-mail: ukpejefelix@gmail.com

Accepted 3 September, 2013

This paper examines the causes and methods of tenant eviction in property management practice in Ilorin metropolis, Nigeria with a view to suggesting measures aimed at reducing its incidence. The 16 registered estate surveyors and valuers in the study area were surveyed with a structured questionnaire. Data collected were analysed using descriptive statistics. The study's result revealed that rent default which accounted for 57.66% of the reasons for evictions was the most important. The most significant method adopted for evicting tenants was quit notice. This paper provides a basic guideline for policy makers to seek a solution to eviction problems. It also provides an alternative method of eviction which is relatively less expensive and time consuming.

Key words: Property management, tenant, tenant eviction, summary possession, premises recovery, tenancy, Ilorin, Nigeria.

INTRODUCTION

The term „eviction“ describes the practice of involuntary removal of person(s) from their homes. It is frequently associated with a range of related terms such as premises recovery, ejection, forced removal, relocation, dislocation, expulsion and displacement. The consequences of eviction are highly disturbing, particularly when we look more closely at its local impacts – on individuals, families and communities (Leckie, 1995; Momah, 2011; Landlord and Tenant Board, 2012; Moneke, 2009). Also of great concern is the impending eviction of thousands of families living in various categories of rental properties across the country.

Although the causes of tenant eviction can be varied, in most instances, it arises as a response of landlords to violation of the lease term by tenant. A lease is a contract between a landlord and tenant which contains the terms and conditions of the rental. It cannot be changed while it

is in effect unless both parties agree (Boulder, 2012). Both landlord and tenant have some obligations to respect under the tenancy agreement. Whenever there is a conflict between the landlord and tenant arising from breach of lease terms, eviction may be inevitable especially when other forms of settlement are not feasible (Ojo, 2007). Different methods have been used in different places. While tenant eviction raises a lengthy series of human, social, economic and political considerations, this study will examine the practice primarily within the purview of property management.

A very important aspect of the activities involved in property management is dealing with leases and most importantly, dealing with tenants to facilitate a good landlord-tenant-manager relationship.

Property management problems would reduce considerably if all tenants comply with the rules, covenants

and conditions of a tenancy. Even where this is possible, some other reasons would make it imperative to terminate some tenancies. In property management, tenant eviction is almost inevitable although some precautions may be taken to avoid it. It is a global phenomenon, occurring in all parts of the world, both developing and developed countries (COHRE, 2004). A Landlord who wants to terminate a tenancy and recover possession of his property from a tenant for whatever reason must observe due diligence and lawful procedure to achieve his objective. Self-Help is an extra-judicial remedy to enforce or protect a right, where the Landlord employs self-help, it must be lawful otherwise he will be criminally liable for his actions (MBIE, 2013; Momah, 2011; Moneke, 2009).

In Nigeria and particularly in the study area, most tenants, landlords as well as property managers have suffered untold hardship, tremendous financial loss, social stigma, and various degrees of disgrace from the problems that culminated in tenant eviction. The main thrust of this paper is to identify and examine the causes and methods adopted for tenant eviction in residential and commercial property markets in order to improve upon property management generally and more specifically in Ilorin metropolis.

LITERATURE REVIEW

Concept of tenant eviction

Ordinarily, eviction means removing a tenant from the premises in which they live by legal proceedings, for a particular reason known to the Landlord. Its professional meaning is given as "a legal proceeding by a lessor (landlord) to recover possession of property" (Friedman et al., 1997). When a tenant fails to comply with the lease agreement, the landlord may seek eviction of the tenant to terminate his rights to use the property. The Wikipedia (2011) defined eviction as "a legal process by which a landlord forces a tenant to move out of the landlord's property involuntarily and usually permanently". Texas Low Income Housing Information Service (2006) refers to eviction as "a lawsuit filed by a landlord to remove persons and belongings from the landlord's property". In Texas law, these are also referred to as "forcible entry and detainer" or "forcible detainer" suits. There are hundreds of cases filed every day with Texas justice courts (also called justice of the peace or J. P. courts). In British Columbia Canada, eviction, also known as "unlawful detainer", "summary possession", or "forcible detainer" in some jurisdictions, is the removal of a tenant from rental property by a law enforcement officer. Before a tenant can be evicted, a landlord must win an eviction lawsuit (Wikipedia, 2011). In Australia, Residential Tenancies Act 1995 and Regulations described eviction

as a legal process to force the tenant to leave the rented premises (South Australia Central, 2006). "An eviction is a court action a landlord must use to remove a tenant from an apartment or room". [The Legal Assistance Resource Center of CT, 2006).

In some areas, landlords can evict their tenants without cause. In other areas, the law requires landlords to have a "just cause", which usually includes non-payment of rent or damaging the property. There is a general trend towards requiring just cause for eviction and this portends danger for efficient housing delivery (Carroll, 2008). In Nigeria, just cause is necessary for an eviction suit to favour the landlord (ACN, 2011; Lagos State Government, 2011; Nigeria Property Centre, 2012).

Eviction can be actual, constructive, partial or retaliatory in nature (Friedman et al., 1997; RHOL, 2006): Actual eviction exists where one is removed from the property either by force or process of law. When it is by the process of law it is called Legal eviction (Aaron, 2003). It requires that a proper notice is served requiring the tenant to vacate the apartment within a specified time interval, and court process is used to follow up when the tenant dishonors the notice. Constructive eviction exists when, through the fault of the landlord, physical conditions of the property renders it unfit for the purpose for which it was leased. A tenant who has been constructively evicted has a number of legal recourses. He may be able to terminate the lease, order constructive eviction, and end liability for future rent payments (Burke and Snoe, 2008). Partial eviction exists where a tenant is deprived of a portion of the property for example, where a substantial modification is required on one side of the building, the landlord and the tenant may agree to a partial eviction from the property because of the disruption to be caused by the work. The tenant's rent will be reduced accordingly. Retaliatory eviction according to Aaron (2003) and RHOL (2006) occurs when a landlord attempts to evict a tenant in response to some (legal) action taken by the tenant. Eviction suit could be dismissed if the tenant provides reasons to convince the court that it is retaliatory.

Reasons for tenant eviction

Although the reasons for evicting tenants can be varied, some of the common factors identified from literature as grounds for tenant eviction in real estate practice are non-payment of rent, violation of other lease covenants, health and safety issues, criminal acts, unruly behaviour and requisition of the premises for personal use by the landlord (Aaron, 2003; Amos, 2006; Ojo, 2007; Lagos State Government, 2011; Land Registry for England and Wales, 2012; Nigeria Property Centre, 2012; e-How, 2013; Department of Commerce, 2012; Minnesota Judicial Branch, 2013). These are common to all countries and states.

Non-payment of rent

On any day following the day the rent was due, when the tenant failed to pay, the landlord can serve a termination notice to be effective ten days after the date the notice was served. The tenant may within five days after receipt of the notice pay all rents due and the notice of termination is then void (University of British Columbia, 2004). If the tenant refuses to pay or move out, eviction procedure may commence. Rent arrears is the commonest of all the reasons for tenant eviction (ACN, 2011; Nigeria Property Centre, 2012; Topham, 2012; Land Registry for England and Wales, 2012; MBIE, 2013; Michigan Legal Aid, 2012; Hartman and Robinson, 2006; Mitchell, 2003; Amos, 2006).

The vast majority of residential evictions are for non-payment of rent, which are usually treated as a summary proceeding and do not require a trial of fact (RHOL, 2006).

Regarding rent arrears in Scotland, non-payment of rent for a period exceeding three months is sufficient grounds for a Sheriff Court to grant a repossession order whether the lease is an assured tenancy or a short assured tenancy (The Housing (Scotland) Act, 1988). However, the law in England and Wales regarding private sector tenancies, the Housing Act (1988) provides that if the tenant owes more than two months or eight weeks rent, then the Judge must award a repossession order (HowToBooks, 2006). For non-payment of rent, the tenant must be fourteen days in arrears before a landlord serves the notice.

Eviction for cause

The identified grounds on which a landlord can terminate a tenancy agreement for cause are disturbance of other tenants, extraordinary damage to the property, abuse of the property, failure of tenant to pay security deposit within 30 days of signing tenancy agreement, knowingly misrepresented the property to a prospective tenant or purchaser, serious infringement on safety and other lawful right or interest of landlord or other tenants, unreasonable number of people occupying the premises, breach of reasonable term of agreement, frustration of the agreement, assignment or subletting of premises without landlord's consent, break a serious law like prostitution, or buying and/or selling drugs; and government's order to vacate the premises relative to safety, health, fire prevention or zoning (University of British Columbia, 2004; Spitzer, 2006; Chavis, 2006; U. K. Deputy Prime Minister, 2005; Kyle and Kennehan, 1979; Carroll, 2008). Where there is a breach of the agreement by the tenant, he must be given at least seven days to remedy the breach and then at least a further seven clear days to vacate, if the breach is not remedied.

Requisition of premises for personal use by the landlord

Whenever the landlord requires the property for his personal purpose, the tenant may be required to vacate the property. A landlord may terminate the tenancy agreement on the ground that he requires the property for his personal use but proper notice must be given to the tenant (Aluko, 1998; University of British Columbia, 2004).

Holdover

Where the term granted under a lease expires, the tenant is expected to vacate the premises, or renew the tenancy with the consent of the landlord. In absence of any of these, the tenant overstays so the landlord may evict to recover possession (Spitzer, 2006).

THE STUDY AREA – ILORIN

Ilorin is located on Latitude 8⁰30"N and Longitude 4⁰35"E. It lies in the transitional zone of the middle belt and serves as a gateway city between the north and south-western part of the Nigeria. It is the capital of Kwara State and lies along the Lagos – Kaduna highway, 306 km from Lagos, 600 kilometres from Kaduna and about 500 kilometres from Abuja. The 2006 population census figure revealed that there are 2,371,089 people in Kwara State with growing rate of 6.2% (NPC, 1991, 2006; Odeniyi, 2007). Out of this, 1,012,894 representing 42.72% of the state total population lives in Ilorin. The state capital is experiencing a very high rate of population growth over the time. The city is divided politically to form parts of five local government areas. One urban – Ilorin West Local Government, and four rural – Ilorin East, Ilorin South, Moro and Asa Local Government Authorities.

The Ilorin property market can be classified into three viz: the residential, commercial and industrial property markets. The residential property market is characterised by various types of houses present all over the city. The traditional centre of the city (Oke – Iele, Pakata, Adangba, Omoda, Ajikobi, Oloje, Gegele, Sanni-Okin, Eruda, Balogun Fulani, Alanamu, Ita – Adu, etc) comprises mainly old compound and tenement houses interspersed with block of flats all of high-density category. Medium density housing estates are found at Oloje, Kulende, Adewole, Irewolede and the Mandate estates. They are characterised by two, three and four – bedroom bungalows, and extensions and modifications to create extra spaces to accommodate more people. Low-density areas are found in the GRA, Taiwo and parts of Adewole areas where the houses are mainly detached bungalows of two to five bedrooms, duplex and maisonettes.

Commercial properties consist mainly of shops, open markets and offices. Shops are generally available at all locations and neighbourhoods to provide shopping facilities. They however, attract higher values at the city centres and main business districts. They range from small cubicles or kiosks patronised by small-scale traders, to open markets and stores. Office refers to buildings that provide ample room spaces and facilities to support a good working condition for people. They include those occupied by private professional offices of lawyers, chartered accountants, surveyors, consultants, hospitals, etc and corporate organisations like banks, insurance companies, etc.

Commercial buildings dominate the properties along Taiwo, Yoruba, Murtala and Unity Roads. Most of the buildings that were hitherto designed for residential purposes along these roads have been converted to either offices or shops. Multi-purpose built offices and shopping complexes are also very common. Along other roads are found residential, convenience shops and stores. Although there are owner-occupied properties, the commercial and residential property markets are active in Ilorin. This is evidenced by the number of quacks apart from professionals engaged in real estate business.

There is little concentration of industrial properties as industrial development in the city is very low. Few industrial premises are found along Asa Dam Road, Gaa – Imam along Ajase – Ipo Road and Western Reservoir Road. Examples of the available industries are Global Soap and Detergent, Dangote Flour Mills, Sawmills, Kwara State Metal and Chemical Industries, Delta Cables, 7-UP and Coca Cola plants. Cases of isolated small-scale industries (food, drink, leather and furniture products) are also found scattered all over the city. Most of the industrial premises are owner-occupied and there are few cases of tenancy in industrial property, so the market is not quite active.

RESEARCH METHODOLOGY

The study was conducted in Ilorin metropolis in 2010. The focus group for the research work was the 16 practising firms of estate surveyors and valuers who are custodians of properties and are often involved in management of landed properties. They are the real estate consultants professionally recognized in Nigeria to conduct property management activities (FGN, 1975). Essential primary data for this study include the socioeconomic characteristics of respondents, causes and methods adopted for evicting tenants. The primary data were collected through self-administered questionnaires from the practising estate surveying firms in the city. The questionnaires were a combination of closed and open-ended questions.

Each respondent was asked to complete a questionnaire by answering questions concerning their socioeconomic status including qualifications, scope of practice, experience of property management practice, reasons for evictions and methods adopted for evicting tenants. Data were analysed mainly with descriptive statistical techniques such as frequency distribution tables and percentages.

Sample characteristics of respondents

The sampling characteristics for the practising firms of Estate Surveyors and Valuers that were surveyed are shown in Table 1. A total number of 16 firms that were practising in Ilorin were all considered for the study.

All the 16 questionnaires administered were duly completed and returned giving 100% response rate. 56.25 % of the respondents were over 50 years old, 21% average 41 to 50 years while 18.75 were less than 40 years old. 62.5% were the principal partners in their firms, 25% were estate officers while 12.5% were branch managers. 37.5% have more than 15 years experience of the practice, 31.5% have between 11 and 15 years, 18.75% have 6 to 10 years while 12.5% have less than 6 years experience in the practice of estate surveying. 50% had BSc degree, 31.25% had HND while 18.75% had additional qualifications at masters level. 62.5% were associates, 31.25% were fellows while only 6.25% were probationer members of the Nigerian Institution of Estate Surveyors and Valuers. The scope of practice of the respondents indicated that all (100%) engaged in property valuation, management, estate agency, 50% engaged in feasibility appraisals and 43.75% engaged in property development.

RESULTS

Causes of tenant eviction

Overall, the main causes of eviction revealed by the study were rent default, breach of covenant, holdover and owner's intention to use the property. As presented in

Table 2, the estate surveyors indicated that out of a total of 2,147 evictions that occurred during the period under review, the majority of eviction 1,238 (58%), were prompted by rent default; 415 (19%) tenants were evicted because they breached covenants involving repairs, subletting without consents, misuse of property and other terms of their tenancies. 262 (12%) tenants were evicted because the landlord wanted to use the property, holdover accounts for 103 (5%) while 130 (6%) tenants were evicted for other reasons like the need for renovation and change of ownership.

In the residential property sector as shown also in the Table 2, eviction of 870 (60%) tenants were caused by rent default, breach of covenant caused 252 (17%) evictions, while 163 (11%) tenants were evicted because the landlord wanted to use the property. Furthermore, 65 (5%) tenants were evicted on account of holdover and 96 (7%) tenants were evicted for other reasons. In the commercial property sector, breach of covenant accounted for the largest proportion of eviction. It was responsible for evicting 368 (53%) tenants. Moreover, 163 (23%) evictions were due to rent default; owner's intention to use the property accounted for 99 (14%) evictions, holdover accounted for 37 (5%) while other reasons accounted for evicting 34 (5%) tenants. Rent default was discovered to be the most significant cause of tenant eviction in residential properties while breach of covenant was the most prominent reason in commercial property sector.

Table 1. Sample characteristics for estate surveyors (16).

Characteristic	Value	Percentage
Age	Less than 40 Years	18.75
	41 – 50 Years	25.00
	Over 50 Years	56.25
Positions in their firms	Principal	62.50
	Branch Manager	12.50
	Estate Surveyor	25.00
Years of experience	3 – 5 Years	12.50
	6 – 10 Years	18.75
	11-15 Years	31.25
	16 – 20 Years	18.75
	Over 20 Years	18.75
Academic and professional qualifications	B.Sc	50
	HND	31.25
	M.Sc / MBA	18.75
	Probationer	6.25
	ANIVS	62.50
	FNIVS	31.25
Professional services	Property valuation	100
	Property management	100
	Estate Agency	100
	Feasibility study	50
	Property development	43.75

Source: Author's field survey, 2010.

Table 2. Reasons and methods adopted for eviction.

Reasons for eviction	Residential	Commercial	Total
Rent default	870 (60.17%)	163 (23.25%)	1033 (48.11%)
Breach of other covenants	252 (17.43)	368 (52.50%)	620 (28.88%)
Holdover	65 (4.5%)	37 (5.28%)	103 (4.80%)
For owner's use	163 (11.27%)	99 (14.12%)	262 (12.20%)
Others	96 (6.54%)	34 (4.85%)	130 (6.06%)
Total	1,446 (67.35%)	701 (32.65%)	2,147 (100%)
Methods adopted for eviction	Residential	Commercial	Total
Quit notice	856 (59.20%)	365 (52.07%)	1221 (56.87%)
Court action	338 (23.38%)	183 (26.11%)	521 (24.27%)
Inter-personal resolution	252 (17.43%)	153 (21.83%)	405 (18.86%)
Self-help	0	0	0
Total	1,446 (67.35)	701 (32.65)	2,147 (100%)

Source: Author's Field Survey, 2010.

Methods of tenant eviction

The responses shown in Table 2 also reveals that majority of the tenants were evicted by conventional

methods of eviction that is, court action and or notice to quit. Of all the evictions, quit notice accounts for the largest proportion 1,221 (57%) while court action accounts for 521 (24%). Evictions effected by negotiation

also amounted to 405 (19%). In the residential property sector, 856 (59%) tenants were evicted by quit notice, 338 (23%) by court action, and 252 (18%) by negotiation. Furthermore, the responses also revealed that 365 (52%) commercial property tenants were evicted by quit notice, 183 (26%) by court action and 153 (22%) by negotiation. Eviction by quit notice is the most prominent during the period under review for residential and commercial properties.

The court action and quit notice are much related. Before the eviction procedure can get to court, quit notice must have been served appropriately. Most tenants will vacate the premises latest by the expiration of quit notice. However, the other tenants that refuse to respect the stipulations of the quit notice are dragged to court. Notice to quit and court actions are the legal methods supported by statutory provisions for tenant eviction and that is the reason why they are most commonly employed by the professionals.

IMPLICATION OF FINDINGS AND CONCLUSION

The implications of the above findings are many. First, the qualitative and quantitative housing problems remained substantial in Nigeria. Eviction is a hidden problem that confronts many and constitutes a major problem for most productive men and women in the society. The implication here is that most people live in constant fear of eviction and this represents traumatic living condition which will have negative impact on real productivity of average persons involved. Rent default is the most prominent cause of eviction especially in residential property sector. Whether any downward trend in evictions can be achieved depends largely on the future trend of rent arrears and this could be significantly affected by the level of income. To a very small extent, the future trend of evictions is also dependent on the changing incidence of other causes of eviction and how they are addressed. The professional property managers should continue to embrace the legal methods of eviction (as is done in developed countries of USA and UK) notwithstanding they are expensive and time consuming in Nigeria. To enhance the efficacy of these methods in Nigeria, government should ensure that the problems associated with court method of eviction are removed to make them relatively less cumbersome, inexpensive and speedy. It is also necessary to organize at the state and local levels, improved legal system that will create policies to reduce the impact of involuntary moves on the most vulnerable tenants and prompt determination of eviction cases within short period. This will encourage landlords and managers to adopt court process whenever it is necessary to evict a tenant. The estate surveyors should also be mindful of proper selection of tenants for properties. Careful screening of tenants before giving possession will eliminate bad tenants and reduce

drastically incidence of eviction for all categories of properties. While evictions may be inevitable in certain circumstances, they should be undertaken only as a last resort, and adequate care must be taken to avoid waste of resources.

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