



The Legal Challenges of The Tenancy Contract in Dubai: A Critical Analysis

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ABSTRACT

The expansion of Dubai's real estate industry engenders a major economic importance to the region however, challenges are also imminent. In support of the growth in the sector, various forms of legislations and laws were enacted to support the tenancy contract such as Law No. 26 of 2007 Regulating Relationship between Landlords and Tenants in the Emirate of Dubai and Law No. 33 of 2008 amending for Law No. 26 of 2007. By using doctrinal legal research methodology, this article aims to examine the legal challenges of the tenancy contract in Dubai. The primary and secondary data are collected through the library approach and then analysed using critical approach. It is discovered that the non-existence of the long-term laws on lease contract remains an issue in Dubai. This is evidently clear in situations where the lease agreement has ended, and the property owner intends to make alterations deemed beneficial to the property's value. In such cases, a conflict arises if the tenant refuses to vacate the property. It is suggested that article No. 25/2 in Law No. 33 of 2008 should be amended in order to allow the lessor to vacate the property and obtain the required approvals to make changes to the property. The law should lay emphasis on the great coordination between the entities authorised to obtain the necessary licenses to enforce the Article 25/2 in Law No. 33 of 2008 as well.

Keywords: Tenancy agreement; Legislation; real estate; Eviction; Contract

INTRODUCTION

Similar to the industrial revolution in Europe between 19th century and the 20th century that herald the crisis in the real estate sector, the United Arab Emirates is experiencing population growth and increasing in economic activities. This is causing challenges in the growing real estate sector because of the increasing demand for rental services. Consequently, many residents have resorted to exploring the booming business opportunity in the real estate sector. So, lease has become one of the most frequently traded contracts in the commercial sphere in Dubai. With the surge in the real estate sector across Dubai and the emerging crisis, the need for designing appropriate policy regulations became a major concern of the governments (Al-Swaify, 2022). One of such related laws is the Federal Civil Transactions Act of the United Arab Emirates (hereinafter referred to as “FCT”) No. 5 of 1985 whereby legislator regulated the provisions of the lease contract under utility contracts. Note that in some Emirates there are extensive lease laws that regulate the relationship between the tenant and the landlord. In these laws, the obligations of the contracting parties are determined, while leaving room for the conclusion of other agreements, provided that they do not violate the regulating laws. Furthermore, the reality of the legal regulation of the relationship between the landlord and the tenant did not stop at the enactment of laws only, as The establishment of the Center for the Resolution of Rental Disputes aims to promote economic and social stability for all parties involved in the real estate rental sector and its related sectors.

As it is known, rental laws are rules that govern this form of contract or tenancy agreement between the landlord and tenant (AL-Shok, 2016). However, several forms of conflict between parties to the contract have been prevalent in the real estate business in Dubai. This is due to the legislation currently in force does not adequately regulate long-term rentals; despite the existence of an act to regulate conducts of parties in the lease, subject of the lease in Dubai remains ambiguous; the laws in force have neglected important aspects. This appears clearly in the case of the expiry of the lease contract and the landlord desires to vacate the property he owns in order to make changes he deems necessary to achieve benefit from it and the tenant refrains from evacuating the property which prevented the achievement of balance between the obligations of the two parties, so the lease contract became a burden on one party rather than the other (Abdali, 2017). Thus, it will make the landlord reluctant to offer his property for rent, which will eventually affect the prosperity of the real estate sector (Abdali, 2017). As a result, this article examines the legal challenges of the

tenancy contract in Dubai by addressing the problem of long-term leases and its effects on the landlord in Dubai.

METHODOLOGY

The article employed doctrinal legal research methodology. Primary and secondary data are used. The primary and secondary data are collected through the library approach. Specifically, the primary data are collected from the three (3) main Laws, such as FCT No. 5 of 1985, Law No. 26 of 2007 and Law No. 33 of 2008. The secondary data are sourced from legal documents, books, articles, and online resources. Finally, both types of data are critically and analytically examined and interpreted.

DISCUSSION AND ANALYSIS

Tenancy Agreement

The United Arab Emirates' (hereinafter referred to as "UAE") legislators defined the lease contract in Article no. 742 of the FCT No. 5 of 1985, it is the lessor's conferring on the lessee an intended benefit from the leased property for specific period in exchange for a rent Known. The establishment of the Center for the Resolution of Rental Disputes aims to promote social and economic stability for all parties involved in the real estate rental sector and its related sectors. Therefore, the contract is considered the source of the tenant's usufruct of the property (Al-Shuwaihi, 2020). With regard to last definition, it should be noted that the legislator, in Law No. 33 of 2008, defined the lease contract for real estate only and excluded other things, and the scope of application of the definition is limited to real estate in the Emirate of Dubai. This makes it different from the definition referred to in the FCT No. 5 of 1985, in which it defined the lease contract for real estate and non-real estate throughout the United Arab Emirates (Balushi, 2012).

From a legal standpoint, the lease agreement is a formal document that establishes the landlord-tenant relationship. This definition outlines the respective obligations and responsibilities of each party involved. Typically, a real estate lawyer is engaged to draft such agreements for a fee. (Sheehani, 2020). However, there is a trend that has started to take root in Dubai in recent years because many landlords now desire to keep the legal fee to themselves. They collect the attorney fee from the tenant and give the tenant a free tenancy agreement from a previous transaction or some other sample agreement downloaded from the internet. In view of this practice, both the

landlord and the tenant run the risk of possessing a document that may be considered invalid by a court of law, thereby exposing themselves to unnecessary risk. The tenancy agreement is a crucial document that clearly outlines the rights of both the landlord and the tenant in an unambiguous manner. (Fauzi, 2010). In view of this practice, both the landlord and the tenant run the risk of possessing a document that may be considered invalid by a court of law, thereby exposing themselves to unnecessary risk. The tenancy agreement is a crucial document that clearly outlines the rights of both the landlord and the tenant in an unambiguous manner (Latif, 2020). After signing the lease contract between the landlord and the tenant, the contract must be registered with the concerned authority in each emirate. Contract registration is mandatory to benefit from the services provided by the competent departments and institutions, such as water and electricity connection, as well as communication and internet services, parking permits for residents, and others (Telecommunication and Digital Government Regulatory Authority, 2023).

Concerning the purpose of tenancy contract, it is important to note that rental possession consists of usufruct, which means the right to enjoy the use and benefits of the leased premises, without destroying or damaging them. The landlord hands over the property to the tenant in return for payment of the specified rent. The landlord retains ownership of the leased premises, and the tenant must hand them over to the landlord at the end of the lease term. The landlord is also entitled to recover leased premises that have not been settled due to non-payment of rent. The property is handed over to the owner in a suitable condition, as the right to rent should give the owner a safe investment rather than risk. At the same time, the leasehold possession is beneficial to the lessee, because it guarantees him the right to use the property that he does not have the financial ability to own (Daniel, 2012).

Tenancy Laws in UAE and Dubai and Legal Challenges in Evacuation of the property in Dubai

Tenancy law is a basic regulatory framework regulating the relationship between landlords and tenants. It defines the obligations, risks, and procedural requirements for handling disputes (stalawfirm, 2019). In the first years of the 21th century, the economy of the Arab Gulf states, including the United Arab Emirates, witnessed growth due to the rise in global oil prices, on which these economies depend. This led to an increase in the volume of real estate investment in order to meet the increasing demands on real estate, whether for housing or in order to carry out commercial activities (Balushi, 2012). As a result, the need for a greater legislative role emerged

to regulate the rental relations that arise between owners and landlords, especially in light of the increase in rental disputes that occurred due to the increase in the volume of real estate investment due to the growth of the country's national economy. The following addresses the applicable laws relating to the real estate sectors.

- 1- FCT No. 5 of 1985 amending by FCT No. 1. of 1987. In this law, the UAE' legislators organised the subject of rent throughout the United Arab Emirates. Where the legislators referred to this topic under the title of rent in general. The law included the definition of the rent, the pillars of the rental contract, the impacts of rent, the lessor's obligations, the tenant's obligations and when does the rent end.
- 2- Emirate of Dubai Act No. 26 of 2007: The Emirate of Dubai Act No. 26 of 2007 regulates the interaction between landlords and tenants. In this statute, the legislators specified the lease agreement and its requirement to be registered with the Real Estate Regulatory Authority. The statute also specified the length of the lease and the amount of rent to be paid by the tenant. The legislation also specifies the responsibilities of both the tenant and the landlord, as well as the circumstances under which the landlord may require the tenant to quit.
- 3- Law No. 33 of 2008: Due to the desire of the legislators in the Emirate of Dubai to develop the legal regulation of the real estate sector in the emirate, Law No. 33 of 2008 was enacted to , which included the amendment of Articles (2), (3), (4), (9), (13), (14), (15), (25), (26), (29) and (36) of Emirate of Dubai Act No, 26 of 2007.
- 4- Decree No. 26 of 2013 The Rental Disputes Settlement Center in the Emirate of Dubai: Under the directives of the Ruler of Dubai, Decree No. 26 of 2013 was issued. This Decree is not related to the rental laws in Dubai, but it greatly supports the rental law, as it includes the establishment of the Rental Disputes Settlement Center. Furthermore, the decree grants the Rental Disputes Settlement Center the authority to consider and adjudicate rental disputes with high professionalism and transparency, as it aims to create a judicial system specialised in considering rental disputes, and to develop procedures for resolving this type of dispute through a quick and simplified mechanism. This is to achieve the highest levels of justice and to achieve social and economic stability for all those involved in the real estate rental sector, and to support sustainable development in the UAE.

- 5- Decree No (43) for 2013 regarding the Determination of the Increase in Rent for Properties in the Emirate of Dubai: The decree deals with laws related to determining the increase in real estate rental allowance in the Emirate of Dubai and helps in dealing with the illegal rise in rents in Dubai, where the maximum increase in the real estate rent allowance in the Emirate of Dubai is determined when renewing real estate rental contracts in Dubai.

With regard to the legal challenges in the eviction of the property in Dubai, it is important to mention that article 25 of Law No. 33 of 2008 clarified the cases and conditions for the eviction of the property from the tenant. It stated that “the landlord may demand the eviction of the tenant before the expiration of the tenancy period in the following circumstances: if the tenant fails to pay rent or any part thereof within thirty (30) days of receiving a notification from the landlord for payment; if the tenant subleases the property or any part thereof without obtaining the written approval of the landlord, in which case the eviction shall apply to the subtenant, and their right to seek compensation from the tenant shall be reserved; if the tenant uses or allows others to use the property for illegal or immoral activities; if the tenant causes changes to the property that jeopardize its safety to such an extent that it cannot be restored to its original condition, or if the tenant intentionally damages the property or negligently fails to take proper precautions, or if the tenant allows others to cause such damage; if the tenant uses the property for purposes other than the purpose for which it was leased, or if they use the property in a manner that violates planning, building, and land-use regulations; if the property is in danger of collapsing, provided that the landlord can prove such condition through a technical report attested by Dubai Municipality; and if the tenant fails to comply with legal obligations or the conditions of the tenancy contract within thirty (30) days of receiving notification from the landlord to adhere to such obligations or conditions.”

Landlord may demand eviction of tenant upon expiry of tenancy contract in the following cases; “If development requirements in the Emirate requires demolition and reconstruction of the property in accordance with government Authorities’ instructions. If the property requires renovation or comprehensive maintenance which cannot be executed while tenant is occupying the property, provided that a technical report attested by Dubai Municipality is to be submitted to this effect. If landlord wishes to demolish the property for reconstruction or to add new constructions that prevent tenant from benefiting from the leased property, provided that necessary licenses are obtained. If landlord wishes to recover the property for use by him personally or by

his next of kin of first degree. Furthermore, it is worth noting that in all above mentioned four situations, landlord must notify tenant with reasons of eviction at least ninety (90) days prior to expiry date of tenancy contract.”

Despite the intervention of the local legislator in the Emirate of Dubai in the real estate rental sector and the legislation of laws that regulate the relationship between the lessors and the tenants, it is discovered that the law did not address all aspects of that relationship, especially in the case of evacuating the tenant real estate. To prove and demonstrate that, this article provides a real example of a dispute that was presented to the competent judicial authorities. The following highlights the facts of that dispute.

1- The owner of the property wanted to demolish the property to start a new project on the current plot.

2- On 04/01/2015, the owner served a legal notice duly authenticated to the tenant and notified him to vacate the property in order to demolish the same after 12 months.

3- On 31/01/2017, and after numerous tries to evict the property in an amicable manner, the owner registered the dispute No. 2017/00956/02 Residential Rentals, before the Rental Dispute Committee, requesting for vacating his property.

4- The Judicial Committee asked the owner to submit the demolition permit for the building as a proof of his desire to demolish. The owner submitted the preliminary approval for the demolition instead of the demolition permit. Because the permit is issued only by Dubai Municipality under a no objection letter from the Dubai Electricity and Water Authority (hereinafter referred to as DEWA), and the former cannot issue such letter unless the tenants evacuate the property.

- In support of the owner’s claim (the landlord), he submitted the final demolition permit for the neighboring villas as well, as proof that he wanted to demolish the entire nine villas in which the tenant is staying in one of them.

5- A preliminary judgment on 14/02/2017 is issued which adjudicated to pay rent arrears only and avoided the main subject of the case (the claim of eviction).

6- On 22/02/2017, the owner appealed the preliminary judgment and renewed his claim to oblige the tenant to vacate the property. He explained to the court that it is impossible to issue the demolition permit because it is completely related to eviction of the tenant and provided a

supporting document which is the requirements of issuance a demolishing. One of the necessary requirements is the DEWA's non-objection letter.

7- On 22/03/2017, the judgment of the appealed case was issued in upholding the preliminary judgment and avoided obligating the tenant to vacate the property, that is because the owner did not submit any new document that prove the demolishing and that the current demolition permit does not belong to the villa subject matter of the case.

8- On 11/04/2017, the owner filed a petition reconsideration in the appealed judgment.

9- On 08/05/2017, the judgment of the petition was issued and it ruled that the petition to be rejected.

10- The Negotiations between the owner and the tenant began to order that the tenant evacuate the property in an amicable manner. The owner had to assign to the tenant an amount of 168,014 dirhams in exchange for handing over the property to the owner. Therefore, an agreement of understanding and acknowledgment of assignment was signed against the evacuation on 30/05/2017.

11- On 09/07/2017 the final DEWA bill was issued and the procedures for obtaining the demolition permit were completed and the project started.

By analysing this article 25/2 of Act No. 33 of 2008, it becomes clear that the property owner must obtain the approval of the competent authorities to vacate the tenant from the property. If these approvals are not granted, the lessor is not entitled to evict the tenant from the property. However, the landlord cannot vacate the property from the tenant if the latter does not accept the eviction, because the authorities will not grant approval unless the tenant has left the property as stated in Act No. 33 of 2008. This, in turn, will prevent the landlord from being able to vacate the property and make the changes to the property. It causes difficulties on the owner before Dispute Settlement Committee as the committee requires a no objection certificate of demolition of property from Dubai Municipality. As a result, it is clear that in practice, there is a legal gap and shortcomings in the law regulating the case of eviction due to the fact that the law favors one of the parties at the expense of the other. This leads to a dispute and a great loss for the other party that is not favored by the terms and conditions of the contract.

CONCLUSION

Rent means that the owner of the property delivers the property to someone who agrees with him to benefit from the property for a specific period and for specific rent fees. The agreement includes the rights and obligations of the landlord and the lessee. In order to achieve its legal effects, it must be registered with the authorities specified by law.

Tenancy Act is a basic regulatory framework regulating the relationship between owners and tenants. Determines the obligations, risks, and procedural requirements for handling disputes. In this regard, the law relating to landlord and tenant in Dubai has become of increasing importance in recent years. This is largely due to some factors that includes population growth and increase in economic growth. Therefore, a number of laws have been legislated that regulate the real estate sector and preserve the rights of stakeholders in this sector, in order to develop this sector and encourage individuals to invest in it to achieve the development targeted by the UAE in all sectors.

Although rental laws have continued to evolve over time, the laws in Dubai fall far short of effective implementation of the contract agreement by the parties. This appears clearly in the case of the expiry of the lease contract and the landlord desires to vacate the property he owns in order to make changes he deems necessary to achieve benefit from it and the tenant refrains from evacuating the property. This is because the landlord cannot vacate the property except after obtaining the approval of the authorities concerned with making changes to the property, bearing in mind that these same authorities do not grant these approvals until after the tenant has vacated the property. Consequently, the property owner will not be able to make the required changes to the property, which will prevent him from achieving the benefit from the property that would occur if the changes were made. There is no doubt that this does not agree with the principle of justice and fairness, which requires that the owner be free to dispose of his property as long as that disposition does not violate the law and does not lead to harm to others.

Therefore, the legal Article No. 25/2 related to eviction in the case of the expiry of the lease contract should be amended, in order to allow the lessor to vacate the property and obtain the required approvals to make changes to the property, because the owner has the right to do whatever he sees fit to achieve benefit from it. Finally, the law should lay emphasis on the great coordination between the entities authorized to obtain the necessary licenses to enforce the Article 25/2 in Law No. 33 of 2008 and non-contradiction between them through requirements that cannot be met by

the owner where in then the law will lose its meaning and will never come into force regardless of the compliance on the side of the landlord.

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