



ABANDONMENT OF TENANCY AND TENANT LOCKING-UP PREMISES IN NIGERIA: LEGAL ISSUES AND SOLUTIONS

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ABSTRACT

Tenancy relationship involves the holding of interest in land or property by a tenant under a tenancy agreement. The tenancy relationship is a common occurrence in Nigeria, with a substantial portion of the population participating in landlord-tenant arrangements. However, disputes often arise from issues related to the termination of tenancy or the recovery of premises. The paper is aimed at examining the legal aspects of the abandonment of tenancy and tenant locking-up premises in Nigeria. The paper employed the doctrinal methodology, examining relevant statutes, case law, and scholarly literature. The findings of the paper revealed that tenants often abandon properties in Nigeria and keep keys with third parties or even to themselves without the consent of the person having the immediate estate in reversion, in the hope that they have surrendered possession. The paper concluded that the abandonment of tenancy and tenant locking-up of premises pose significant challenges. Legal processes must be followed to ensure justice and protect the rights of both parties. The paper therefore, recommended that the Nigerian government should review and strengthen the existing legal framework to ensure it adequately addresses the issue of tenants abandoning premises.

INTRODUCTION

The right to acquire and own movable and immovable property in any part of Nigeria is vested in every citizen by the Constitution.¹ The law of landlord and tenant shares largely from the law of contract and property law.² With the daily explosion of the Nigerian population, there is a corresponding need for houses to accommodate this rising population. Consequently, there has always been the need for individuals, corporations and governments to build and lease or rent houses to fill this void. These houses could either serve residential or commercial purposes. This has made it imperative for the regulation of the relationship between landlords and tenants so as to avoid arbitrary increments in rents, wrongful eviction and illegal holding over of premises.

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¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 43.

² E Chianu, *Law of Landlord and Tenant* (2nd edn, Lawlords Publications 2010) 1.



The procedure for the recovery of premises is generally regulated by statute.³ In the absence of any separate agreement with respect to period of notice to be given to a tenant, a landlord is expected to comply with the provisions of tenancy law especially in terms of notice before he can recover his premises from a tenant, and going contrary implies that such eviction is invalid.

In Nigeria, prior to the enactment of the Land Use Act 1978,⁴ leases and tenancies existed in contra distinction to freehold estates in land, in terms of duration and tenure, ranking next to freehold interests. The reduction of all interests in land to a right of occupancy by the Land Use Act marked a paradigm shift in nomenclature and largely tenure. Under the present system of landholding in Nigeria, a right of occupancy has the semblance of a lease while the leasehold interest is akin to a sublease. An assignment of a lease implies an assignment of the residue of the term while a transfer of a measure of same is known as an under lease.⁵

In the tenancy contract, landlord hands over exclusive possession of the property to the tenant for an agreed period of time, in exchange for payment of rent; on expiry of the tenancy period, the exclusive possession of the property back to the owner. It must however be noted that, inasmuch the property reverts to the landlord; there is still a laid down procedure for recovering this property from the tenant. The landlord may not, and without employing statutorily provided means, evict the tenant from the property.⁶

³ C C Wigwe, 'Recovery of Premises in Nigeria: An Assessment of the Relationship of Landlord and Tenant Law' [2011] (4) *Journal of Commercial and Contemporary Law*, 63-75.

⁴ Cap L5, LFN 2004.

⁵ A A Utuama (ed.), *Critical Issues in Nigerian Property Law* (Malthouse Press Ltd 2016) 78.

⁶How to Recover Residential Premises from Tenants in Lagos State, Nigeria, <<https://www.nigeriapropertycentre.com/blog/renting-letting/how-to-recover-residential-premises-from-a-tenant-in-lagos-state-nigeri>> accessed 25 May 2022.



However, a nightmare commonly shared by property owners is that of an erring tenant unwilling or unable to pay the rent as agreed on the due date. This is simply because real estate is as much a business entity as a commercial bank. Many Landlords cannot resist the need for self-help at the perception of such an unfortunate dream.⁷

To be sure, the court frowns at a Self-Help, as seen in *Hemmings V. Stoke Poges Golf Club Ltd*,⁸ Scrutton LJ stated clearly that “...when the grievance complained of is the removal by no more force than is necessary of a trespasser and his property from the premises which the landlord has a right to enter for the purpose, the justification covers not only the entry but the forcible expulsion which is the object of the entry and which makes the entry a forcible one”. Lord denning was more decisive when he reaffirmed the above view in the case of *McPhail v. Persons Unknown*⁹ “if (a tenant) remains in possession (after the expiration of his tenancy) there is high authority for saying that the owner is not entitled to take the law into his own hands and remove the tenant by force. He should go to the court and get an order for possession”. The Nigerian courts pay tribute to this reasoning. In the case of *Oni v Dada*¹⁰ where a tenant breached the terms of his tenancy agreement, his landlord wrote to him of the determination of the tenancy forthwith and shortly after, let the premises to a third party who trespassed into the premises. The court held that the breach of covenant on the part of the tenant did not in any way justify the immediate trespass in to the premises. A good landlord-tenant relationship is, therefore,

⁷E Palmer, ‘Recovery of Premises: The Law and a Landlord’s Right to Self Help’
<https://www.linkedin.com/pulse/recovery-premises-law-landlords-right-self-help-eseoghene-o-palmer> accessed 26 May, 2022.

⁸ (1920) 1 KB 720.

⁹ (1973) 2 Ch 447, 458-9.

¹⁰ (1957) SCNLR 258.



necessary for the property investment to yield the necessary return in order to meet the aim of the landlord (property owner).

ABANDONMENT OF TENANCY AND TENANT LOCKING UP PREMISES IN NIGERIA

The right to acquire and own movable and immovable property in any part of Nigeria is vested in every citizen by the Constitution.¹¹ The law of landlord and tenant shares largely from the law of contract and property law.¹² With the daily explosion of the Nigerian population, there is a corresponding need for houses to accommodate this rising population. Consequently, there has always been the need for individuals, corporations and governments to build and lease or rent houses to fill this void.

Abandonment arises where the tenant quits the demised premises without an *animus revertendi* (an intention to return). This intention may be shown either by proving facts from which such an intention can be presumed, or by direct evidence of the intention by the tenant.¹³ Abandonment does not amount to surrender. Where tenant merely abandons possession without showing the intention to surrender the tenancy such abandonment shall not amount to a valid surrender in

¹¹ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s 43.

¹² E Chianu, *Law of Landlord and Tenant* (2nd edn, Lawlords Publications 2010) 1.

¹³ E Chianu, *Law of Landlord and Tenant* (Benin: Oliz Publisher 1994) 261-269.



law. In *Ajax v. Aina*¹⁴ the tenant left the premises on October 1965 but failed to surrender the keys to his landlord. He did not notify the landlord in any manner. The argument for the tenant was that he vacated the premises on the day he vacated possession and was not liable to an order to give up possession which was plaintiff's claim.

LEGAL ISSUES IN ABANDONMENT OF TENANCY AND TENANT LOCKING UP PREMISES

In Nigeria, the legal issues surrounding the abandonment of premises by tenants are complex and multifaceted. If a tenant abandons the premises, the landlord has the right to recover the property. However, the landlord must follow the legal process, which includes serving a seven days' notice of the owner's intention to recover possession of premises on the tenant.¹⁵

The law also prohibits landlords from using force or self-help to evict a tenant. If a tenant breaches a fundamental term in the tenancy agreement, the landlord may apply to the court to recover the premises. An application to the court is necessary because, for unlawful eviction, the landlord can be sued and made liable for damages. Another legal issue is the provision of statutory notices. Thus, a landlord seeking to recover possession of his premises before the expiration of the tenancy is obliged to issue a notice to quit. The notice stipulates a period within which the tenant must quit possession of the premises.¹⁶

¹⁴ (1967) LLR 152.

¹⁵ Tenancy Law, s 15(1).

¹⁶ U Chioma, 'An Overview Of The Legal Framework For Recovery Of Premises In Nigeria', <https://thenigerialawyer.com/an-overview-of-the-legal-framework-for-recovery-of-premises-in-nigeria/#google_vignette> accessed 22 December 2023.



Surrender of leases as one of the ways of terminating leases or tenancy agreements is not a very frequent subject of legal discourse and review in property law. Sadly, however, several leasehold interests and landlord/tenant relationships are being severed and terminated abruptly via abandonment of the lease or tenancy without the consent of the lessor or the landlord as a crook way of escaping some liabilities which may have arisen in the course of the lease and which the lessee or tenant is not willing to discharge. Lessees and tenants often abandon properties and keep keys with third parties or even to themselves without informing the owner who has the immediate estate in reversion, hoping to have surrendered same. The law has always been that the consent of the landlord (not just his knowledge) is a major factor in determining the validity of a surrender. However, the Supreme Court of Nigeria appears at some point to have redefined this position without necessarily overruling the existing law when it held in *RCC Ltd v Rockonoh Ltd*.¹⁷ effect of which is that a landlord is bound to accept a surrender of his property because there is a duty on him to mitigate losses.

For there to be a valid surrender there should be return of the keys by the tenant to the landlord. It is not enough for a tenant to wish to return keys or inform the landlord or owner of the property of his intention to return the keys. Thus, where the tenant keeps the keys to himself and merely vacates the premises such does not amount to surrender in law. Adefarsin J. in *Asoropa v Orelaja*¹⁸ stated it thus ‘A tenant cannot be regarded as having delivered up possession if he vacates the premises without returning the keys and thereby prevents the landlord from entering into possession’.

¹⁷ (2005) 10 NWLR (Pt.934) 615.

¹⁸ (1976) 5CCHCJ 1405.



While surrender is predicated on the return of keys Adefarasin's holding above suggests that failure to return keys must amount to preventing the landlord from entering possession. Key here therefore can mean the physical object with which the tenant opens and locks the property and can also literally mean access. It is a common fact that landlords gain access to their demised property without necessarily having the keys, e.g. where the tenant vacates the property without locking it up.

On appeal, Taylor CJ while stating that the principle was too wide observed that it is possible that the tenant, as a result of negligence or otherwise may misplace or lose the keys and so not in a position to hand them over to the landlord. From the foregoing it can be safely stated that it is sufficient once the tenant has indicated an intention to surrender though without surrendering the keys and the landlord accepts that position, provided the landlord is able to have access to his property. What is important is that the landlord is put back in possession and he consents by actually or constructively resuming possession and not whether he gained access through the keys.

The question that necessarily follows is whether the mere return of keys by the tenant amounts to surrender. In *Conac Optical (Nig.) Ltd. v Akinyede*,¹⁹ the respondent who was the plaintiff at the trial court commenced this action against the appellant claiming arrears of rent for the 2nd floor apartment occupied by the defendant / appellant under a yearly tenancy agreement. The defendant / appellant desiring to terminate the lease agreement gave to the plaintiff/respondent one month notice instead of the 6 months' notice required by law. The defendant/appellant

¹⁹ (1995) 6 NWLR (Pt. 400) 212.



conceded this fact but argued that plaintiff/respondent was wrong and it was unreasonable to continue to treat the tenancy as still subsisting especially after the defendant had sent back the keys of the apartment to him through his (plaintiff) clerk.

It is commendable that the various recovery of premises laws in Nigeria contain provisions that regulate the relationship between the landlord and the tenant. However, the law is geared towards offering more protection to the tenant than the landlord. While the tenant is relaxed, the landlord must do everything necessary to enjoy legal support. Arguably, a seven days' notice given to a tenant, in appropriate situations, will be short to secure alternative accommodation, and a tenant may not seem to lie on a bed of roses. However, a tenant who fails to renew his rent or breaches specific covenants, which entitles the landlord to a right of re-entry, forfeiture or possession, may be deemed to have made up his mind to secure alternative accommodation.

When tenants decide to move out of a rental property, they ideally give ample notice before leaving. However, it is not always that simple for rental property owners. The problem of tenants abandoning premises without paying rent or notifying the landlord is a common one in Nigeria.

SOLUTIONS TO ABANDONMENT OF TENANCY AND TENANT LOCKING UP PREMISES

The problem of tenants abandoning premises without paying rent or notifying the landlord is a common one in Nigeria. There are some possible solutions that landlords can adopt to prevent or deal with this situation, such as:



Screening prospective tenants

Conducting background checks on potential tenants can help landlords avoid renting to unreliable or dishonest tenants.

Signing a tenancy agreement

A written and signed tenancy agreement can clearly stipulate the terms and conditions of the tenancy, including the consequences of breaching the agreement. On concluding negotiations to a premises, the tenant has a right to ask for a written agreement and be comfortable with its clauses before executing same. This is advisable because it will be easier to prove the terms of the tenancy, which creates the rights and obligations of the parties.²⁰

Issuing statutory notices

The law required the severance of the relationship of landlord and tenant before wresting possession from the tenant. Without such determination of the relationship, it will be legally impossible for the court to make an order for possession. The notice to quit serves this purpose of severing or terminating the relationship of landlord and tenant.²¹ Landlords should follow the legal procedure for recovering their premises from tenants who have abandoned them, by issuing the required statutory notices. Section 7 of the Recovery of premises Act provides that for a tenancy to be validly determined, two requisite Statutory Notices must be served on the tenant.

²⁰ O B Nwune and Others, ‘Recovery of Premises in Nigeria: A Law for Justice or Legalised Bias against the Landlord?’ [2021] (1) *Achievers University Law Journal*, 227.

²¹ A F Afolayan and P C Okorie, *Modern Civil Procedure Law* (Lagos: Dee-Sage Nigeria Limited 2009) 472.



These are notice to quit and notice of owners' intention to apply to the court to recover possession.²²

A landlord seeking to recover possession of his premises before the expiration of the tenancy (effluxion of time) is obliged to issue a notice to quit. The notice stipulates a period within which the tenant must quit possession of the premises. The period of notice given will usually depend on the agreement between the parties. In the absence of any agreement, the period of notice will be determined by statute.²³

Seeking legal action

Landlords should seek legal action against tenants who have abandoned their premises without paying rent or damages. Wigwe²⁴ examined the procedure of recovery of premises using litigation in Nigeria. The author observed that the procedure for recovery of possession in Nigeria is regulated by statutes which must be strictly complied with in order to achieve success. Procedure identified includes service of statutory notices, commencement of the action in a court of competent jurisdiction; hearing of the action and proof of ingredients required by law and judgment/order for possession.

ANALYSIS OF THE PROCEDURES FOR RECOVERY OF PREMISES IN NIGERIA

The recovery of premises laws has been enacted in various States of Nigeria principally to provide for the procedures a landlord must adopt to recover possession. Such procedures are

²²*Nigeria Airways Ltd v Mahdi* (2014) 11 NWLR (Pt. 1417) 35.

²³ Chioma (n 16)

²⁴ C Wigwe, 'Recovery of Premises in Nigeria: An Assessment of the Relationship of Landlord and Tenant Law' [2011] (1) *Journal of Commercial and Contemporary Law*, 63-75.



primarily to protect the interest of the tenant against that of the landlord. The processes are governed by the respective Rent Control & Recovery of Residential Premises Laws of every State within Nigeria. As observed by Coussey, J .C.A in the case of *Okedare v Hanid*,²⁵“The main object of the Recovery of Premises Law was to place limitations on the common law rights of a landlord with the object of regulating the recovery of and restraining summary eviction from occupied premises”.

At common law, the landlord on the effluxion of time or expiration of a valid notice to quit, may proceed to court for possession. However, the Recovery of Premises Laws require that an additional seven days notice of owner’s intention to apply to court to recover possession be given to the tenant. The landlord can only take out a writ after the expiration of the seven days. The tenant therefore becomes a statutory tenant and cannot be evicted by force, but by a lawful court order. For unlawful eviction, the landlord can be sued and made liable for damages.

In *Ihenacho v Uzochukwu*,²⁶ the Supreme Court of Nigeria held that resort to self-help by the landlord to evict a tenant who is in lawful occupation is not within the purview of the provisions of the Recovery of Premises Law and that such a landlord renders himself liable to the tenant in trespass. But at common law, the tenant does not have that right; he is treated as a tenant at sufferance or a trespasser. To further buttress the position of the court in relation to recovery of premises, the court, in the case of *Ndielli & Another v Eze*,²⁷ had this to say:

²⁵ (1955) 15 WACA 17 at 19.

²⁶ (1997) 1 SCNJ 117 at 284.

²⁷ (2016) JELR 48772 (CA).



It is the law, and it has been reiterated almost to irritation that recovery of premises must be done by due process of the law. Any other form of recovery is unlawful. It cannot be over-emphasised that recovery of possession of premises from a tenant can only be by an order of the court, obtained after hearing the parties, pursuant to the relevant recovery of premises law. Furthermore, section 7 of the Recovery of premises Act provides that for a tenancy to be validly determined, two requisite Statutory Notices must be served on the tenant. These are Notice to quit and notice of owners' intention to apply to the court to recover possession.²⁸ The following paragraph will discuss these in detail.

Written Authority

The Landlord should contact an attorney who is sound in the areas of recovery of premises law, and authorize him in writing to act on his behalf in the recovery process. Although, this is not essential, a landlord can act suo motu. However, it is tidier to have a representative. Research shows that tenants/licensees' are more responsive and less evasive when professional representatives are authorized to act on behalf of the Landlord.

Notice to Quit

Usually, when a tenancy has been determined either by effluxion of time or a breach of covenant or most commonly rent due in arrears, a 'quit notice' shall be needed to be issued to the tenant. The life span of a 'quit notice' is determined by the nature of the tenancy agreement. The length of notice in determining a tenancy is so vital that non-compliances nullify the notice. The law

²⁸*Nigeria Airways Ltd v Mahdi* (2014) 11 NWLR (Pt. 1417) 35.



allows parties to a tenancy to agree on the terms of their contract and on the length of notice that would determine the tenancy.²⁹ However, if parties do not agree on the length of notice, the length of notices provided under the recovery of premises statutes automatically applies. The formula used to determine the period of a notice is³⁰

- a. Tenancy at will or weekly tenancy- a week's notice
- b. Monthly tenancy – a month's notice
- c. Quarterly tenancy- a quarter's notice (3 months)
- d. Yearly tenancy- a half year's notice

However, for a statutory notice to be valid in proceedings for recovery of premises, it must be issued by the appropriate person; failing which the validity of the notice and its service, as well as the determination of the tenancy, will be vitiated. Section 7 of the Recovery of Premises Act unequivocally provides that statutory notices may be given either by the landlord or his agent. This provision has been judicially noticed in many cases.³¹ An agent is any person employed by the landlord in the letting of a premises or in the collection of rents. It is a person specially authorised to act on behalf of the landlord in a particular manner. Usually, the authority is by writing under the hand of the landlord.

It, therefore, follows that caretakers or solicitors are agents of a landlord. During a tenancy proceeding, evidence must be led to establish that the landlord employs the agent or solicitor to let out the premises and collect rents. In *Balogun v Lagos Executive Development Board*,³² the

²⁹*African Petroleum Ltd v Owodumni* (1991) 8 NWLR (Pt. 210) 395.

³⁰ Recovery of Premises Act (Abuja) 1990, s 8.

³¹*Papersack Nig. Ltd v Odutola & Anor* (2006) 18 NWLR (Pt. 1012) 474-475.

³²(1963) LLR 13.



court held that unless a solicitor is specially authorised in writing by the landlord, he could not serve statutory notices required under section 7 of the Recovery of Premises Act.

The service of a valid notice to quit is a condition precedent to the lawful recovery of premises. Needless to say that where a valid notice to quit is not properly served on a tenant, the tenancy relationship between the landlord and the tenant subsists. This implies that a court can neither make an order for delivery of possession nor payment of mense profit in favour of the landlord. The only order the court can make in the circumstance is the payment of rent arrears. It is also important to note that where a landlord serves a defective notice to quit or notice of owners' intention to apply to the court, the proper order the court should make is for striking out the suit, not dismissal. In that instance, all the landlord needs to do is to issue and serve a proper notice and subsequently commence the proceedings properly.³³

Notice of Owners Intention to Recover Premises

This is a very important notice and so because without it, no Landlord can bring an action in court for an order to recover possession. It is pertinent to note that this Notice unlike a 'Notice to quit' has a 7-day life span. According to Agaba,³⁴ "it would appear that the use of the phrase 'the tenancy shall lapse and the court shall make in order for possession and arrears of rent' used severally in section 13 of the Tenancy Law (of Lagos) does not obviate the need for these notices.

³³*Eleja v Bangudu* (1994) 3 NWLR (Pt 334) 526

³⁴ M M Stanley-Idum and J A Agaba, *Civil Litigation in Nigeria* (Lagos: Nelag Co. Ltd. 2015) 267.



This notice is immediately sent at the expiration of a ‘Notice to Quit’. After the notice of quit has expired, the notice of the owner’s intention refers to the landlord as the owner and no more as the landlord because at the time of serving of the 7-day notice it is deemed in law that by the ‘Notice to quit’ the tenancy has been further determined. Although the notice is required to be for seven days, the landlord may still validly commence action for recovery before the expiration of the seven days, provided that the action is not heard before the expiration of seven days.

Civil Process by Writ or Plaint for Refusing to Deliver up Possession

Upon expiration of all the aforementioned notices, and in light of the fact that the erring tenant (now trespasser) has neglected or refused to vacate premises, the landlord should be able to go to court to recover possession by seeking an order of possession from the court.³⁵ The fact that must be stated in the writ includes:

1. The fact that the claimant is entitled to possession of the premises in question
2. Accurate description and location of the premises
3. The nature of tenancy and rent payable
4. The date of expiration
5. The fact that notwithstanding of the service of the notices the tenant has refused to give up possession
6. The claim section may contain the arrears of rent and mesne profit due

Certain documents must be attached:

³⁵ Recovery of Premises Act (Abuja) s 10(1); Rent Control Law (Lagos) ss 17 and 18; Recovery of Premises Law, 1999 (Rivers) s 8.



1. Evidence of service of the notices, usually by pictorial evidence in line with section 84 of the Evidence Act 2011.
2. Duplicate copies of the notices

Service of any notice and other court processes under the Rent Control and Recovery of Residential Premises Law is to be effected in accordance with the Rules operating in the Magistrate Court. That is, personal service but where personal service is not possible, a copy of the process shall be pasted on some conspicuous part of the premises sought to be recovered and such pasting shall be deemed good service on the Defendant.

However, it is advisable to seek leave of court when the writ is to be served through substituted means. It is worthy to note that where a tenant carried out improvements on the premises and such improvements have not been exhausted before the landlord terminates the term of the tenancy, he is entitled to counter-claim for the unexpired value of such improvements. But such improvements must be done with the landlord's consent in writing. It is crucial to further state that failure to serve statutory pre-action notices or any one of the notices before commencing a recovery of premises action renders the action incompetent, thus ousting the court's jurisdiction to entertain such a matter.³⁶

Thus, even with all the procedures provided by the statutes for the recovery of premises in Nigeria, the process of issuing statutory notices, filing claims, and obtaining court orders can be still be time-consuming and expensive, especially if the tenant contests the eviction or appeals

³⁶*Mobil v L.S.E.P.A* (2001) 24 W.R.N. 42



the judgment. Also, the procedures for recovery of premises may not adequately protect the rights and interests of both parties.

APPROACHES FOR RECOVERY OF PREMISES IN NIGERIA

There are different approaches for achieving premises recovery in Nigeria. This includes self-help, litigation, and ADR approaches.

The Self-help approach

The self-help approach is an extra judicial remedy employed by the landlord to recover possession of his property through activities that are targeted at causing discomfort to the tenant such as removal of part of the roof, locking-up the premises amongst other. The Lagos State Tenancy Law of 2011 has, however, outlawed the use of self-help approach. The Lagos State Tenancy Law states that anyone that forcefully eject a tenant without the approval of the Court shall be guilty of an offence and is liable to a fine not exceeding Two Hundred and Fifty Thousand Naira (N250,000.00) or a maximum of six (6) months imprisonment and any other non-custodial disposition.³⁷

Litigation

Litigation is another approach being employed for recovery of tenancy. This approach is a lawsuit involving judicial contest to enforce a particular right using the court process.³⁸ The process of recovery of premises using litigation as dictated by the statute involves stated

³⁷ Lagos State Tenancy Law 2011, s 44

³⁸ Legal Dictionary, <www.legal-dictionary.thefreedictionary.com/litigation> accessed 23 December 2023.



procedure such as the issuance of statutory notices, trial and cross-examination, judgement and execution of judgement through obtaining a warrant of possession from the Court. Apart from the fact that the use of litigation for recovery of premises must follow the strict procedure set up by the statute and any slightest deviation from the request of the law will frustrate such attempt, the process is also time-consuming and expensive as a result of overburden docket of the courts. The case of *Oketade v Adewunmi*³⁹ revealed that it could take up to fifteen years or more for landlords to recover their premises using litigation especially when such matters were decided in the Supreme Court. Litigation can also destroy goodwill between landlord and tenant, therefore, damaging chances of future business dealings. In fact, there is an adage in Nigeria that says, “two parties cannot return from the court and still be friends”.

However, In *Ndieli & Anor v. Eze*,⁴⁰ it was stated thus: "It is the law and it has been reiterated almost to irritation that recovery of premises must be done by due process of the law. Any other form of recovery is unlawful. It cannot be over-emphasized that recovery of possession of premises from a tenant by a landlord can only be by an order of Court obtained after hearing the parties pursuant to the relevant Recovery of Premises Law”.

Alternative Dispute Resolution (ADR)

Against the challenges of using litigation to resolve disputes, ADR serves as a veritable option that addresses some of the inherent challenges in litigation. ADR involves the use non-

³⁹ (2010) 8 NWLR (Pt. 1195) 63.

⁴⁰ (2016) LPELR-42122(CA).



adversarial approaches to settle a dispute and it involves settling disputes outside a courtroom.⁴¹ The use of ADR for recovery of premises, therefore, entails effecting recovery of premises using private settlement. ADR approaches employed for resolving landlord-tenant related dispute such as recovery of premises includes negotiation, mediation and arbitration.⁴² Negotiation is an informal nonbinding proceeding in which two or more participants attempt to reach a joint decision on matters of common concern when they are in actual or potential disagreement or dispute.⁴³ It is a process of iterated communication to reach a joint decision by the parties in a dispute without a third-party neutral.⁴⁴ For instance, the landlord and tenant can employ negotiation to resolve disputes involving the surrender of possession. Also, the landlord's agent acting on behalf of the landlord can also negotiate with the tenant on surrendering possession of a property.

Mediation, on the other hand, is referred to as “facilitated negotiation.”⁴⁵ It is a nonbinding proceeding in which the parties attempt a consensual resolution with a neutral third party's help.⁴⁶ In mediation, the neutral third party promotes communication between the parties to help them reach an agreement. The neutral's intention is to assist the parties to reach a creative solution that satisfies all the parties involved, rather than to impose a decision, however, parties

⁴¹ G Lobovitis and L R Hidalago, ‘Alternative Dispute Resolution in Real Estate Matters: The New York Experience’ [2010] (11)(437) *Cardozo Journal of Conflict Resolution*, 437-461.

⁴² n 41.

⁴³ T O Kasumu, ‘Effectiveness of the Citizens Mediation Centre in Landlord-Tenant Alternative Dispute Resolution in Lagos State’ (Ph. D. Thesis submitted to the Department of Sociology, College of Business and Social Sciences, Covenant University, Ota 2017).

⁴⁴ *Ibid.*

⁴⁵ L L Riskin, ‘Understanding Mediators’ Orientations, Strategies, and Techniques: A Grid for the Perplexed’ [1996] (7) *Harvard Neg. Law. Rev.*, 13.

⁴⁶ Kasamu (n 42).



need not follow the mediator's suggestions to reach a solution that satisfies them.⁴⁷ Unlike, negotiation and mediation, arbitration is a binding adjudication of the parties' claims and defences by a neutral arbitrator(s).⁴⁸ The use of ADR for resolving landlord-tenant related disputes has the benefits it offers to disputants such as speedy resolution of disputes at low cost, confidentiality, informality, justice, preservation of relationships, flexibility, among others.⁴⁹

However, because of the high cost of litigation and the lack of ADR techniques in Nigeria, some landlords may resort to self-help measures such as changing locks, disconnecting utilities, or using force to evict tenants who are in breach of their tenancy agreements. However, this is illegal and can expose the landlords to liability for damages and criminal prosecution.

CONCLUSION

With the daily explosion of the Nigerian population, there is a corresponding need for houses to accommodate this rising population. Consequently, there has always been the need for individuals, corporations and governments to build and lease or rent houses to fill this void. These houses could either serve residential or commercial purposes. Having in view the possibility of unequal bargaining powers that may exist in a tenancy relationship, especially to the detriment of the tenant, the urgent need to regulate tenancy relationships privately entered into between landlords and tenants became inevitable, and the ultimate result of this is the enactment of the respective rent control and recovery of premises laws in the various States in Nigeria. The objective of these laws is mainly to regulate rights and obligations under tenancy

⁴⁷ Lobovitis and Hidalgo (n 41).

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*



agreements and relationship between the tenant and the landlord, including the procedure for the recovery of premises.

RECOMMENDATIONS

The paper therefore recommends as follows:

- i. The Nigerian government should review and strengthen the existing legal framework to ensure it adequately addresses the issue of tenants abandoning premises. This could include clearer definitions of abandonment, stricter penalties for tenants who abandon properties without proper notice, and more efficient procedures for landlords to recover possession of abandoned properties.
- ii. Even with all the procedures provided by the statutes for the recovery of premises in Nigeria, the process of issuing statutory notices, filing claims, and obtaining court orders can be still be time-consuming and expensive, especially if the tenant contests the eviction or appeals the judgment. Thus, being a body that promotes the rule of law, the Nigerian Bar Association should mandate its members, especially property consultants, to create a platform to assist in educating landlords and tenants in tenancy matters.
- iii. The government could promote the use of alternative dispute resolution (ADR) methods, such as mediation or arbitration, to resolve disputes between landlords and tenants. ADR can be quicker, cheaper, and less adversarial than court proceedings.



- iv. It is here recommended that the excessive delays in recovery of premises proceedings injected by unnecessary adjournments and applications be proactively dealt with. This will help curtail recourse to self-help by landlords in recovering their premises