

Legally speaking.....

LEGAL firm director Andy Low Hann Yong said landlords should not underestimate the importance of a tenancy agreement.

"Tenancy agreements are a form of contract, governing the obligations and the relationship between landlords and tenants. Landlords are entitled to the remedies available upon the breach of contract by the tenants.

"For instance, the parties can include the following terms and remedies in the tenancy agreement; landlords are entitled to deduct from the security deposit such sum of sums that may be due to the landlord as rent or deduct the costs of any repairs and replacement of damaged or lost fixtures belonging to the landlords.

"Landlords are also entitled to deduct from the utilities deposit for any outstanding water or electricity bills, including all fines and penal-

ties, due to the tenants.

"On the other hand, landlords shall permit the tenants to quietly enjoy the premises during tenancy and to maintain main structure, roof, pipes and electrical wiring of the premises."

He said in addition to this, Section 5(1) of the Distress Act 1951 permits a landlord to apply to court for the issuance of a warrant of distress to recover rent due and payable to the landlord by a tenant for a period not exceeding 12 completed months of the tenancy, preceding the date of the application.

"Although the law has made provisions, we have heard many cases whereby landlords lock the tenants out or within the premises when the tenants refuse or delay payment of outstanding rents and refuse to leave the premises.

"The landlords, in such cases, face the risk of being sued for trespassing or charged for unlawful detention. Section 7(2) of the Specific Relief Act 1950 specifically requires landlords to obtain a court order before they can recover possession of the property from tenants.

"An application can be made under the Distress Act 1951 to recover the possession of the property from the tenants with the assistance of a bailiff.

"The bailiff will also be given authority to seize the tenants' immovable properties and put them up for sale. The proceeds can be utilised to satisfy the tenants' rent due and the costs and expenses incurred."

However, if a tenant runs away without notice, the landlord is left with very few options.

"As noted above, if it is expressly provided in the tenancy agreement, the landlord can deduct the rent due from the security deposit before refunding it to the tenant.

"If the security deposit is insufficient, the landlord can sue the tenant for the rent due. If the total judgment debt, which is final sum decided by the judge which may include interest, for the rent due exceeds RM30,000, the landlord has the option of initiating bankruptcy proceedings against the tenant."

Tenancy problems and fixes

as advised by legal firm director, Andy Low Hann Yong



Tenant delays payment of rental

Legal solutions:

- If it's provided expressly in the tenancy agreement, the landlord can unilaterally terminate the tenancy, even if it's only due for seven days. After the termination, the landlord can then rent to new tenants.
- The landlord can also engage a lawyer to issue a letter of demand.

Practical solutions:

- Be firm about payment when dealing with tenants.
- It's also good to initiate action, including legal action, before the sum owed gets larger.

Tenant refuses to leave the premises

Legal solution:

- An application can be made to recover the possession of the property from the tenant with the assistance of a bailiff, who will be given authority to seize the tenant's immovable properties and put them up for sale. The sale proceeds can be utilised to satisfy the tenant's rent due and the costs and expenses incurred.

Tenant leaves with a huge sum of unpaid utilities

Legal solutions:

- Deductions from utility deposits.
- Initiate civil action to recover debts due.

Practical solutions:

- Request higher sum of utilities deposit.
- Ask tenant to open electricity and water bill accounts in his or her own name.
- Insist that the tenant encloses the payment receipt of electricity and water bills, together with the payment receipt of the rent, on a monthly basis.

Illegal activities conducted by the tenant on the premises

Legal solution:

- Depending on the nature of the activities, lodge a police report.

Practical solution:

- Conduct background checks on the tenant before the execution of tenancy agreement.

Examples:

- Credit tip-off service (CTOS) search to check if the tenant is engaged in any other suit.
- Bankruptcy search
- Company search
 - to check the paid-up capital of the company. If the paid-up capital of the tenant is a nominal sum of RM1, be mindful that the rent due may not be recovered even if you win the suit.
 - prepare a "Tenant Application Form" to better understand the profile and background of the potential tenant. In the application form, request that the potential tenant declares personal details such as employment contact, references, education background and nature of business to be conducted on the premise.



Nightmare tenant destroys house of memories

HAVING watched his father go through the agonising experience of renting his house in Teluk Intan, Aqmal is now scarred for life.

"I vividly remember following my mild-mannered father to our house, which he had rented to a taxi driver, when I was still a teenager.

"The house was completely ruined.

"Everything was broken, from the toilet bowls to the ceiling. It was a total mess.

"When my father did not receive rent for almost a year, he requested the assistance of his friend in the

town council to issue a letter stating that the house and everything in it was going to be repossessed by the bank.

"This was all it took for the tenant to make sure he left the house in ruins," said the 47-year-old tutor.

Aqmal said a few days later, his father received a phone call from a neighbour, informing him that his tenant had run off at 3am.

"Up to this day, the memory of entering the ruined house still haunts me.

"It is especially painful because I had spent the first 10 years of my

childhood there.

"Eventually, my father sold the house at below market value because the bad memories were just too much to bear.

"Because of the horrific experience that we went through, I will never consider renting out property to anyone, with or without a legal agreement."

What do you think?
Send your views to
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