

Contemporary Issues Affecting the Rights and Obligations of Landlords under Extant Laws in Nigeria and England

Jonathan Ekperusi, ESQ.*

Imo State University, Owerri, Nigeria

Abstract:-The rights and obligations of landlords in Nigeria have been affected by a series of legislative interventions and case law over the years. Every State in Nigeria has its own Landlord and Tenant Law. The application of the general principles of leasehold law reflects the context of the particular letting. In England as in Nigeria, there are many distinct statutory codes radically different in various respects, but with the general policy of limiting the rent that a landlord can collect, restricting his right to recover possession of premises at the end of a lease or during the term created, among others. In Nigeria, prior to the enactment of the Land Use Act 1978, leases and tenancies existed in contradistinction 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 underlease. While the new forms of estate that can be created under the Land Use Act may be strange to the English Lawyer, the nature of leases and tenancies, the obligation of the parties thereto, and the mode of termination of same, among others, are still governed by the old common law principles and rules either in their original form or as modified by local statutes. The paper reveals that the law of landlord and tenant in England has evolved much more than where it is in Nigeria. The affinity between Nigeria and England, should encourage Nigeria to take advantage of robust developments in England, such as the duty on landlords not to engage in retaliatory evictions, the obligation on residential landlords not to let premises to illegal immigrants, and the liability of landlords for certain anti-social behaviour of their tenants. The device of 'break clauses' gives additional rights to landlords to recover demised premises earlier than anticipated. The paper addresses the dire need to check the activities of illegal immigrants across Nigerian borders and the residency status of persons in volatile areas like the North East region and certain hotspots in the North of Nigeria, as well as the menace of so-called Fulani cattle herders wreaking havoc in

Nigerian Communities by legislation that imposes checks on landlords in the affected areas in allowing non-Nigerians to reside in their premises.

I. INTRODUCTION

Property right in land relates to the authority of the landowner to determine the use or otherwise of the land.¹The right to acquire and own movable and immovable property in any part of Nigeria is vested in every citizen by the Constitution.²The law of landlord and tenant shares largely from the law of contract and property law.³Leases and tenancies occupy significant ranking in the domain of estates in land.⁴ The term *lease* may be used in significantly different commercial and social contexts. A lease may be a tenancy from week to week or a term of 999 years.⁵ It may be a private residential letting, a secured public sector tenancy, an agricultural tenancy or a commercial letting. The application of the general principles of leasehold law will therefore in some measure reflect the context of the particular letting. There is superimposed on the general law, a large body of statutory material dealing with specialized topics that reflect the different commercial and social contexts. In England as in Nigeria, there are many distinct statutory codes radically different in various respects, but with the general policy of limiting the rent that a landlord can collect, restricting his right to recover possession of premises at the end of a lease or during the term created, among others.

In Nigeria, prior to the enactment of the Land Use Act 1978,⁶ leases and tenancies existed in contra distinction to freehold

¹ RA Onuoha, 'Compulsory Acquisition without Compensation Under Nigerian Law' in AA Utuama (ed.), *Critical Issues in Nigerian Property Law* (Malthouse Press Ltd 2016)29.

² Constitution of the Federal Republic of Nigeria 1999 as amended, s 43.

³ E Chianu, *Law of Landlord and Tenant*(2nd edn, Lawlords Publications 2010)1.

⁴ IO Smith, *Practical Approach to Law of Real Property* (rev edn, Ecowatch Publications 2013) 244.

⁵ EH Burn and J Cartwright, *Cheshire and Burn's Modern Law of Real Property*(18th edn, Oxford University Press 2010) 180.

⁶ Cap L5, LFN 2004. The Land Use Act is one of the most criticized pieces of legislation in Nigeria. In its four Odd decades of existence in Nigeria, it has received severe attacks and punches from the Academia, the Judiciary, Legal Practitioners in general and the Press. For a more recent compilation of

*(Managing Partner, *Excellence Solicitors*, Effurun-Warri, Delta State, Nigeria; Statutory Member, National Executive Committee (NEC), Nigerian Bar Association (NBA); Secretary, NBA, Effurun Branch)

LL.M, LL.B (University of Benin); BL; Certificate in Legal Writing Skills for Legal Practitioners (Nigeria Institute of Advanced Legal Studies, Lagos, 2008); Ph.D Candidate (Law), Imo State University, Owerri, Nigeria

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. While the new forms of estate that can be created under the Land Use Act may be strange to the English Lawyer, the nature of leases and tenancies, the obligation of the parties thereto, and the mode of termination of same, among others, are still governed by the old common law principles and rules either in their original form or as modified by local statutes.⁷

This paper undertakes a comparative analysis of the rights and obligations of landlords under extant laws in Nigeria and England. It reveals that the rights and obligations of the parties to a lease or tenancy in Nigeria and England, as in other common law jurisdictions, are largely regulated by the provisions of the applicable legislation and the principles of common law. The rights and obligations are fixed by the covenants in the lease⁸ and thus voluntarily assumed by the parties,⁹ while others are imposed by law. In contractual tenancies, the rights and obligations of landlords are largely defined by the nature and tenor of the covenants contained in the lease agreement executed by the parties.¹⁰ The gaps between the extant positions of landlords in Nigeria and England are exposed, with a recommendation on the need to close the identified gaps.

II. THE NATURE OF THE LANDLORD-TENANT RELATIONSHIP

The relationship of landlord and tenant arises at common law when the holder of an estate in land grants, by means of a contract between the parties, the right to the exclusive possession of his land or part of it to another person, to hold under the grantor for a term of years.¹¹ In such cases, the grant is called a lease, demise or tenancy. The grantor is called the *landlord* or *lessor* while the grantee is the *tenant* or *lessee*. The period granted is called the *term of years* while the interest which the landlord retains, including the right to repossession of the property at the end of the term granted is

called the *reversion*. If the interest of the grantor is itself leasehold, the lease is called a *sublease*, the landlord is a *sublessor*; the tenant is a *sublessee* and the reversionary interest retained is a *leasehold reversion*. The expressions *lease*, *leasehold estate* or *leasehold interest*, *term of years* and *tenancy* are practically synonymous, as they all refer to the relationship between a landlord/lessor and a tenant/lessee.¹² Each expression may more commonly be used in certain contexts. For instance, a leasehold interest that continues from week to week is usually referred to as weekly tenancy; whereas a lease for a fixed number of years may naturally be referred to as a term of years. In all the instances of the landlord-tenant relationship, the landlord/lessor retains a reversionary interest in the property subject of the transaction.

Properly construed under the Land Use Act and as adopted by the landlord and tenant Laws of various States in Nigeria¹³, where a tenancy is created by Deed out of a right of occupancy for a determine term, with or without an option for renewal, it is called a *sublease* or a *demise*. The person who creates same is called the *sub-lessor* while the person in whose favour it is created is called the *sub-lessee* or *under-lessee*; the document creating it is called a *sub-lease* or an *under-lease*. Where a tenancy is created by Deed out of an existing sub-lease for a determinate term, with or without an option for renewal, it is called a *sub-under-lease* or a *sub-demise*, and the person who creates it is called the *sub-under lessor*, the person in whose favour it is created is called the *sub-under lessee*, and the document creating it is called a *sub-under lease*. Whatever may be the nature of the landlord's interest in land, the tenant always has a leasehold interest and the retention of a reversion by the landlord is essential to the existence of a tenancy or lease. Where a landlord conveys the whole of his interest in land, the transaction would leave the realm of lease or tenancy and amount to an assignment and the relationship of landlord and tenant would be extinguished.

The word *landlord* may imply a lordship over, or the ownership of an estate in land. This is particularly true of the position at common law, and it is the case under the law of landlord and tenant applicable in the various States of Nigeria where a landlord maybe construed as the person out of whose interest a tenancy is created. However, at common law, a landlord includes also the person between whom and another the relationship of landlord and tenant exists, which makes it possible to be a landlord without necessarily being the owner of the property. It would therefore be wrong to always attribute ownership to the relationship at common law since the law does not allow a tenant to deny the landlord's title

critiques on the Act, see AA Utuama (ed.), *Critical Issues in Nigerian Property Law* (Malthouse Press Ltd 2016).

⁷In Nigeria and in England, there are several statutes touching and affecting the landlord and tenant relationship.

⁸ RA Onuoha, *Basic Principles of Nigerian Land Law* (ANON Publishers 2010) 206 (hereinafter referred to as 'Onuoha, *Basic Principles of Nigerian Land Law*').

⁹ The legal maxim, *pacta sunt servanda*, enjoins parties to abide by the terms of agreements they voluntarily enter into, as a major pillar of the law of contract. The contractual nature of the landlord and tenant relationship was recently upheld in *Essential Logistics Ltd v. Odili* (2014) 37 WRN 96 (Court of Appeal).

¹⁰ TO Elias, *Nigerian Land Law* (4th edn, Sweet & Maxwell 1971) 273.

¹¹ Smith, *Practical Approaches to Law of Real Property*, 246.

¹² Burn & Cartwright, *Cheshire and Burn's Modern Law of Real Property*, 180 – 181.

¹³ Such as Imo State Tenancy and Rent Tax Law 2013; Rent Control and Recovery of Residential Premises Law, Cap R5, Laws of Delta State 2006; Law of Landlord and Tenant Cap 65, Laws of Osun State of Nigeria 2002; Cap L4 Laws of Kwara State 2007; Cap 75 Laws of Ondo State 2006; Cap 71, Laws of Akwa Ibom State 2000; Cap 79, Laws of Bauchi State 2006; Cap 71 Laws of Oyo State 2000; among others.

over the property tenanted once the relationship of landlord and tenant is established between him and the grantor of the term. This implies that while it may be necessary to ascertain whether an estate in land is vested in a person to qualify as a landlord in various States of Nigeria where the landlord and tenant Law applies, the inquiry is unnecessary in other States where the common law definition of landlord applies. In such States, it is sufficient that there is a contractual relationship of landlord and tenant, either orally or in writing, so that the tenant is *estopped* from denying the existence of the relationship.¹⁴

Under the landlord and tenant law, a tenant is a person or body of persons holding land under a lease or in a leasehold tenure. Usually, a tenant holds under a contractual tenancy for a certain period and pays rent to the landlord as a consideration for a right to exclusive possession, use and enjoyment of land and tenements which belong to the landlord. But under the law of landlord and tenant applicable in the various States of Nigeria, a tenancy maybe created of an interest in land or building so that the tenant thereby acquires a right to some specified use of, or benefit from, or privilege incidental to such land or building, without acquiring a right of exclusive possession of the land or building concerned. This category of tenants includes a licensee in occupation of the land or building of another with his consent, or a service occupant and a tenant holding over upon the expiration of a contractual tenancy but whose occupation is protected by law as in the case of a statutory tenant. Payment of rent is not an essentiality for this second category of tenants, or for any other form of tenancy if the tenancy is by Deed. Payment of rent is not therefore a prerequisite for a valid lease.

A lease is therefore not only an interest in property (legal or equitable), it is also a contract between landlord and tenant. It is a hybrid between contract and property law.¹⁵ The hybrid nature tends to give rise to a kind of tension between contractual rules and the principles of property law applicable to the landlord and tenant relationship. In England and Nigeria, the Courts have insisted that certain essential characteristics of a lease cannot be overridden by the contract between the parties. For instance, irrespective of the freedom of the parties to contract outside the provision of the applicable statutes, certain key features must be present before a lease or tenancy can exist, the maximum duration of the term must be ascertainable at the outset.¹⁶ Furthermore, no matter the nomenclature adopted by the parties in their contract, the Courts have distinguished a lease from a contractual licence.¹⁷ It is not possible to contract outside the general rule that a sub-tenancy comes to an end on the

determination of the head tenancy.¹⁸ The juridical basis for the limitation of the freedom to contract in the landlord and tenant relationship is the principle that a tenancy is not merely a contract; it creates an estate in land. Thus in a tenancy relationship, there is not only the application of the principle of *privity of contract*; there may also be *privity of estate*.¹⁹

III. ESSENTIALS OF A VALID LEASE

For there to be a valid tenancy or lease, certain basic characteristics or features must be present. The arrangement must also be devoid of any of the elements that could vitiate a contract, such as fraud, misrepresentation, mistake, illegality and incapacity. The Essentials of a valid lease under Nigerian and English law, as prescribed by statutes and applied by the Courts, are as follows:

3.1 Grant of Exclusive Possession to the Tenant

For there to exist a valid lease, the landlord or lessor must confer on the tenant or lessee the right to exclusive possession of the demised premises.²⁰ It is a necessary feature of a lease that the tenant shall be given the right to exclude all other persons from the land, including the landlord.²¹ It is the right to exclusive possession that enables a tenant or lessee to enforce his proprietary interest in the demised premises against third parties, even in the absence of the landlord.²² It must be noted that the mere grant of exclusive possession does not create a tenancy relationship. The intention of the parties and the circumstances of each case may distinguish between a tenant and a licensee or a lodger in exclusive possession.²³

3.2 Certainty of Parties/Intention

In order for a lease to be valid, there must be a lessor capable of creating a lease and a lessee capable of taking the demise. The statutes also require that the parties must have expressed their intention to create a landlord and tenant relationship. The intention must be clearly evinced by the parties in clear and unambiguous terms.

3.3 Certainty of Property

The property subject matter of a lease must be ascertainable and described with precision.²⁴ Not only must the property be properly described, it must be in existence at the commencement date of the lease, otherwise nothing is demised and the agreement would be void. Where what is

¹⁴ The doctrine of *estoppel of tenant* has been a part of our adjectival law for many years. It is provided for in s170 of the Evidence Act 2011.

¹⁵ *Linden Gardens Trust Ltd v. Lenesta Sludge Disposals Ltd* (1994) 1 AC 85, 108 per Lord Browne-Wilkinson.

¹⁶ *Prudential Assurance Co. Ltd v. London Residuary Body* (1992) 2 AC 386.

¹⁷ *Street v. Mountford* (1985) AC 809.

¹⁸ *PW & Co. v. Milton Gate Investments Ltd* (2004) Ch. 142.

¹⁹ *Tulk v. Moxhay* (1848) 2 Ph. P. 774; *Patman v. Harland* (1881) 17 E.L.R. Ch. D. 353.

²⁰ *Street v. Mountford* (1985) AC 809

²¹ *London and North Western Rly Co. v. Buckmaster* (1874) LR 10 QB 70, 76.

²² *Cooper v. Crabtree* (1882) 20 Ch. D 589.

²³ *Marchant v. Charters* (1977) 1 WLR 1181, 1185 per Lord Denning MR.

²⁴ *Scarfe v. Adams* (1981) 1 All ER 843, 848; *Yakubu v. Kaduna Furniture & Carpet Co. Ltd* (1985) HCNLR 222; *United Bank for Africa Plc v. Tejumola & Sons Ltd* (1988) 2 NWLR (pt 79) 662.

demised requires extensive description, such as many buildings on the premises, furniture, fixtures and fittings, it is advisable to include a Schedule in the Lease Agreement where all the details would be specifically enumerated.²⁵

3.4 Certainty of Term

For a lease to be valid, it must be for a definite or fixed term with a fixed or ascertainable commencement date. A lease cannot enure in perpetuity.²⁶ A lease must have a definite commencement date and of a fixed duration. Where the commencement date or duration is uncertain, the lease would be void.²⁷

3.5 Certainty of Terms or Covenants

The covenants in a lease must be spelt out otherwise they will not be implied. The covenants in a lease must be certain, such as covenant to pay rent, covenant not to sublet or assign. In the various statutes applicable to the landlord and tenant relationship in Nigeria and England, certain covenants are specifically provided for.

3.6 Formalities

This refers to form. Where the law requires that a certain kind of lease must be in writing, by Deed or to be executed in a particular manner, such a lease would be void unless the prescribed form is complied with.²⁸ The applicable statutes in the various States of Nigeria appear to have whittled down the strict requirements and formalities.²⁹ Again, under the rule in *Walsh v. Lonsdale*,³⁰ equity has intervened to whittle the strict common law requirement as to formality. The rule in *Walsh v. Lonsdale* is to the effect that where a lease agreement is in writing but not under seal, equity would not permit any of the parties to rely on the absence of formality to evade his obligations. For the rule to apply, the essentials of a valid lease must be present in the arrangement between the parties.³¹

IV. SOME OF THE RIGHTS AND OBLIGATIONS OF LANDLORDS IN NIGERIA AND ENGLAND

The rights and obligations of the parties to a lease or tenancy are fixed by the covenants in the lease, while others are implied by law. The rights of the landlord include the following:

4.1.0 Right to Receive Rent

This is perhaps the most crucial right that a landlord enjoys upon the creation of a lease. Although the landlord and tenant relationship can exist without the payment of rent³², rent remains a vital consideration for letting out premises by landlords. It has been held that the payment of rent is a requisite condition for a valid lease.³³ Rent is a certain profit issuing periodically out of real property as compensation by the tenant for his possession and use thereof, during the term created. It is the payment or consideration due from a tenant to his landlord under the tenancy contract.³⁴ Rent includes any part of any crops rendered, or any equivalent given in kind or in labour, in consideration for a landlord's letting or permitting any person to use and occupy any land or other corporeal hereditament.³⁵ It also includes any consideration or money paid or agreed to be paid or value or a right given or agreed to be given or part of any crop rendered or any equivalent given in kind or in labour, in consideration of which a landlord has permitted any person to use and occupy any land, premises, or other corporeal hereditaments, and the use of common areas but does not include any charge for services or facilities provided in addition for the occupation of the premises.³⁶

According to Chianu³⁷, the three major types of rent recognized by law are economic rent, ground rent and peppercorn rent. Economic rent reflects the actual economic value of the premises. Ground rent is paid for the value of unimproved land, while peppercorn is a nominal rent of no practical economic value, which a landlord may impose on a tenant to ensure that he does not in future deny the landlord's superior title to the property.

The nature and amount of rent to be paid are subject of agreement between the landlord and tenant. A landlord cannot therefore validly increase rent unilaterally.³⁸ In areas where rent restriction laws are in force, a landlord must properly serve on the tenant the appropriate notice before any increase in rent can be effective.³⁹ Where a landlord has unlawfully increased rent, a tenant may be entitled to recover such rent, and the landlord is obligated to refund such excess rent to the tenant.⁴⁰ A tenant can recover and a landlord may be obligated to refund overpaid rent during or after the period of his tenancy.⁴¹

4.1.1 The Remedy of Distress

Where a tenant is in breach of the covenant to pay rent, the landlord may exercise several subsidiary rights to the right to

²⁵ Chianu, *Law of Landlord and Tenant*, 115.

²⁶ *Sevenoaks, Maidstone and Tunbridge Rly Co. v. London, Chatham and Dover Rly Co.* (1879) 11 Ch. D 625; *Doe d Robertson v. Gardiner* (1852) 12 CB 319, 333.

²⁷ *Lace v. Chantler* (1944) KB 368.

²⁸ See ss 1, 2 Statute of Frauds 1677; s 3 Real Property Act 1845.

²⁹ Smith, *Practical Approaches to Law of Real Property*, 260.

³⁰ (1882) 21 Ch. D 9.

³¹ *Opara v. Dowell Schlumberger (Nig.) Ltd* (2006) 15 NWLR (pt 1002) 342; *Chinekwe v. Ibeziako* (1975) 5 ECSLR 374; *SCOA (Nig.) Ltd v. Egbuna* (1973) 3 ECSLR 775.

³² *Sobamowo v. Federal Public Trustee* (1970) 1 All NLR 257.

³³ *Amalgamated Press of Nig. Ltd v. Haastrup* (1966) 2 All NLR 52.

³⁴ *Field v. Gover* (1944) 1 KB 200, 204.

³⁵ See s 2 Recovery of Premises Law of Lagos State 2011.

³⁶ S 61 of Imo State Tenancy and Rent Tax Law 2013.

³⁷ Chianu, *Law of Landlord and Tenant*, 251.

³⁸ *Chief M. E. Udih v. Izedonmwun* (1990) 2 NWLR (pt 132) 357.

³⁹ *Olaogun Martins v. Komolafe* (1961) LLR 141.

⁴⁰ *Maki v. Saidi* (1961) 1 All NLR 502.

⁴¹ *Feyisan v. Williams* (1962) LLR 122.

collect or receive rent. In ancient times, the landlord was allowed to levy distress on the goods of the tenant in the premises. Although the medieval concept of rent as a service rendered by the tenant to the landlord has been displaced by the modern concept of payment for the use of the land, it has left behind it the ancient remedy of distress. Distress was a self-help remedy by which the landlord was allowed to seize and sell the goods found on the demised premises whether they belong to the tenant or a stranger in payment of the arrears of rent without recourse to legal action.⁴² In relation to tenancies subject to Rent Control Laws, the remedy of distress is no longer available to the landlord except in execution of the judgment of a Court and in accordance with the Sheriffs and Civil Process Law or the order of the Court where it is satisfied that the tenant is in default in paying the standard rent.

4.1.2 Action for Arrears of Rent

A landlord may recover arrears of rent by action. However, this action is not available where the landlord has levied a distress, unless the proceeds from the distrained goods is insufficient to satisfy the arrears.⁴³ The right to recover arrears of rent must be exercised timeously, otherwise it may be caught by limitation of action. In the recent case of *Ihekwoaba v. Oyediji*,⁴⁴ it was held that where a landlord failed to file an action for recovery of arrears of rent within the period prescribed by statute⁴⁵, the action filed after the statutorily prescribed time is statute-barred.

4.2 Right to Forfeiture

A breach of a covenant to pay rent by a tenant will enable the landlord to re-enter the premises where there is an express provision for re-entry contained in the lease agreement.⁴⁶ At common law, the lessor must make a demand for the arrears of rent between the hours of sunrise and sunset so as to afford the tenant the opportunity of counting out the money while light remains before proceeding to forfeit. However, the requirement of making actual demand may be contracted out by the parties.⁴⁷ It is specifically enacted by the Common Law Procedure Act 1852, to the effect that a lessor may recover possession under a provision for re-entry despite the absence of a formal demand or the usual clause excluding its necessity, if the rent is in arrears for six months and the distrainable goods are not sufficient to produce the amount of the arrears. It should be noted that where the tenancy is regulated, the bringing of an action of ejectment is the equivalent of the ancient right of re-entry.

⁴² *United Scientific Holding Ltd v. Burnley Borough Council* (1977) 2 All ER 62.

⁴³ *Archbold v. Scully* (1861) 9 HLC 360.

⁴⁴ (2013) 28 WRN 97, 138 -139.

⁴⁵ In *Ihekwoaba v. Oyediji* (supra), the applicable legislation was the Limitation Law of Oyo State 1978, s 17 of which prescribed for a maximum period of six (6) years for a landlord to apply to recover arrears of rent.

⁴⁶ *Motayo v. Nigerian Fibre Industries Co. Ltd* (1974) 4 ECSLR 570.

⁴⁷ *Da Rocha v. Shell Co. of Nigeria* (1944) 14 NLR 1.

In order to successfully rely on a covenant for forfeiture, the landlord must establish the existence of a legal lease⁴⁸, the breach by the lessee of a covenant which is not illegal, unreasonable or repugnant to the grant; and the presence of a re-entry or forfeiture clause in the lease agreement.⁴⁹

The landlord may elect to waive the right of forfeiture by doing some act which shows that he treats the relationship of landlord/tenant as still subsisting. For instance, if he continues to demand and accept rent after being aware of the commission by the tenant of an act of forfeiture, the landlord can no longer proceed to forfeit the residue of the term. Parker J. summed up the law in *Mathews v. Smallwood*⁵⁰ as follows:

It is also, I think, reasonably does clear upon the cases that whether the act, coupled with the knowledge, constitute a waiver is a question which the law decides, and therefore it is not open to a lessor who has knowledge of the breach to say. I'll treat the tenancy as existing, and I will receive the rent and I will take advantage of my power as landlord to distrain, but I tell you all I shall do will be without prejudice to my right to re-enter, which I intend to reserve. That is a position which he is not entitled to take up. If knowing of the breach he does distrain, or does receive the rent, then by law he waives the breach, and nothing which he can say by way of protest against the law will avail him anything.

The Court may however grant a tenant relief against forfeiture. The relief may take several forms. If the lessor sues for possession and the tenant at any time before the trial pays or tenders to the lessor or pays into court the arrears of rent and costs, all further proceedings are stayed and he retains possession under the old lease. If the tenant fails to take this opportunity and judgment is given against him, he may, nevertheless, apply for relief within six months after the execution of the judgment. If he fails to pay the rent and arrears with full cost and without applying for relief, he is barred and foreclosed from all relief or remedy in law or equity.

4.3 Right to Terminate the Relationship by Quit Notice

At common law and under the applicable statutes in Nigeria and England, landlords have a right to terminate a lease by issuance of valid quit notice. The length of notice depends of the type of tenancy and the periodicity of same.

4.4 Right to Recover Possession of the Demised Premises

At common law and under the relevant statutes in Nigeria and England, a major hallmark of a lease or tenancy is the right of the landlord to recover possession of the demised premises at

⁴⁸ *Coatsworth v. Johnson* (1886) 55 LJQB 220.

⁴⁹ *Whail v. Bunman* (1953) 2 QB 198, 202; *Koya v. Babayale* (1980) 2 OYSHC (pt 1) 342.

⁵⁰ (1910) 1 Ch. 777, 786.

the expiration of the term granted, upon forfeiture, or by agreement of the parties. In England, parties to commercial leases may insert 'break clauses' which act as exit strategy and allow a tenant to waive all future liabilities and terminate their lease before the end of the agreed term, on agreed conditions. A key requirement of break clauses is the giving of vacant possession by the tenant on the date of the break.⁵¹ The device enables landlords in England to recover possession of commercial leases before the expiration of the term, subject to the conditions mutually agreed upon by the parties.

4.5 Right to the Reversion

In the landlord and tenant relationship, the landlord always retains the reversion and has a right to deal with it as he pleases. He may create other interests over the property based on his reversionary interest thereon.

4.6 Right to Grant or Withhold Consent to Assignment or Subletting

Every landlord retains the right to grant or withhold the granting of consent to the assignment or subletting of the demised premises by the tenant.⁵² The only limitation is that such consent is not to be unreasonably withheld, but the burden of proving whether or not the withholding of consent is reasonable or not lies on the tenant.⁵³

4.7 Right to Effect Repairs in the Demised Premises Without Consultation

In England, the law has evolved to allow landlords effect repairs to demised premises and charge service charges for the repairs without going the whole hog of consulting and obtaining the approval of tenants before the repairs. The landmark decision of the United Kingdom Supreme Court⁵⁴ in *Daejan Investments Ltd v. Benson & Ors*,⁵⁵ now allows landlords in England to carry out repairs without prior consultation. It is believed⁵⁶ that this decision in the *Daejan* case is a major relief for landlords in England as a departure from the earlier decision in *Phillips and Goddard v. Francis*,⁵⁷ which enjoined landlords in England to consider qualifying works as a whole throughout the period of repairs and to consult and account to the tenants.

The law has imposed certain obligations on landlords in Nigeria and England. The following are among the obligations of landlords:

4.8 Obligation to Grant Quiet Enjoyment

When the lease is silent, the law implies in it that the landlord shall provide the lessee with quiet enjoyment of possession. The term is not breached by acts of an adverse claimant to the property demised. There is no liability, therefore, where the disturbance is committed by a person claiming not under the lessor but under a title paramount to him.

4.9 Obligation to Ensure that Demised Premises Are Fit for Habitation

There is no implied covenant that the demised property shall be fit for habitation; similarly there no implied covenant that the landlord will do any repairs to the property. However, there exists an exception in relation to the letting of furnished houses. There is an implied warranty upon the demise of a furnished house that the premises shall be reasonably fit for habitation upon the commencement of the tenancy.⁵⁸

4.10 Obligation Not to Derogate from Grant

A landlord is under an obligation not to derogate from his grant. This means that he must not do anything with the demised property that renders the purpose for which the grant was made to the tenant impossible. Accordingly, Bowen L.J once observed that a grantor having given a thing with one hand is not to take away the means of enjoying it with the other.⁵⁹

4.11 Obligation Not to Engage in Retaliatory Evictions

In England, there is now a duty on landlords not to engage in retaliatory evictions. By the provisions of the Deregulation Act 2015, landlords in England are now prohibited from engaging in so-called retaliatory evictions. The Act⁶⁰ contains provisions designed to give tenants protection from landlords who seek to evict tenants in response to the assertion by the tenants of their legal rights.⁶¹

4.12 Obligation Not to Let Premises to Illegal Immigrants

In England, under the Immigration Act 2014, residential landlords are obligated not to let premises to illegal immigrants as defined by the Act.⁶² The Act imposes an

⁵¹ P Orji and L Meyer 'The Spectrum of Compliance in the Break Clauses of Commercial Leases' [2015] 5 *The Conveyancer and Property Lawyer*, 408 – 416.

⁵² R A Onuoha, *Thesis on Land Use Act & Critical Issues of Reform Plus New Draft Rules & Regulation for Enforcement* (ANON Publishers 2013), 73.

⁵³ *Alakija v. John Holt Ltd* (1973) 1 CCCHCJ 27.

⁵⁴ The Supreme Court has since replaced the House of Lords as the apex Court in the United Kingdom.

⁵⁵ (2013) UKSC 14.

⁵⁶ Natasha Rees, 'Beyond Repairs: Increased Rights for Landlords to Recover Maintenance Cost' [2013] (14) *Solicitors Journal*, 157.

⁵⁷ (2012) EWHC 3650 (Ch).

⁵⁸ *Colling v. Hokins* (1923) 2 KB 617.

⁵⁹ *Birmingham, Dudley and District Banking Co. v. Ross* (1888) 38 Ch. D 295, 313.

⁶⁰ S 33 Deregulation Act.

⁶¹ For a more detailed discussion on the scope of the Act, see J Luba and J Compton, 'An End to Retaliatory Evictions?: New Measures on Repossession by Private Sector Landlords' [2015] (19) (3) *Landlord & Tenant Review*, 113 – 118; MT Lonegrass, 'Eliminating Landlord Retaliation in England and Wales – Lessons from the United States' [2015] 75 *Louisiana Law Review*, 1072 – 1123.

⁶² Ss 20 – 22, Immigration Act 2014.

obligation on residential landlords not to let premises to any disqualified adult.⁶³

4.13 Liability for Certain Anti-Social Behaviour of Tenants

The present position of the law in England is that a landlord could be liable for certain anti-social behaviour of his tenants.⁶⁴ Under the principles evolved by this obligation, the Courts have held that it is fair, just and reasonable to impose on a landlord, a narrowly defined duty of care to move his tenants out of their premises to a safer premises in response to any unusual but dangerous situation that had developed from their anti-social behaviour.⁶⁵

V. LANDLORDS IN NIGERIA AND ENGLAND

There is no doubt that landlords in Nigeria and England enjoy certain rights and are subject to several obligations. It is however obvious that the law of landlord and tenant in England has evolved much more than where it is in Nigeria. Despite the enactment of some recent legislation touching and affecting the landlord and tenant relationship in Nigeria, the Nigerian Lawmaker has not taken advantage of recent developments in England. Ordinarily, it is expected that being a common law country and bearing in mind the affinity between Nigeria and England, as a colony and colonizer, Nigerian laws ought to take advantage of robust developments in England. Whereas English law has imposed a duty on landlords not to engage in retaliatory evictions under the Deregulation Act 2015, no such legislation or principle of law exists in Nigeria. There is therefore nothing in Nigeria that protects tenants from landlords who seek to evict them in response to the assertion by the tenants of their legal rights. Again, under the Immigration Act 2014 the United Kingdom has obligated residential landlords not to let premises to illegal immigrants. In Nigeria, no such legislation exist. More importantly, the law in England, in its bid to protect the weak and vulnerable in society, has developed judicial principles whereby landlords could be liable for certain anti-social behaviour of their tenants. Both jurisdictions however share the usual common law experience of concurrent operations of legislation and judicial decisions as sources of the law of landlord and tenant.

In England and Nigeria, landlords have right to receive rent for demised premises, to recover arrears of rent by action, to re-enter demised premises where there is an express provision for re-entry in the lease, or by action for forfeiture, to terminate a lease by issuance of valid quit notice, and to recover possession of the demised premises at the expiration of the term granted, upon forfeiture, or by agreement of the

parties. In England, the device of 'break clauses' give additional rights to landlords to recover demised premises earlier than anticipated. Landlords in both jurisdictions also share similar right to the reversion of a lease. They also similarly share the same right to grant or withhold the granting of consent to the assignment or subletting of the demised premises by the tenant. In England, landlords now enjoy a right to effect repairs to demised premises and to charge service charges for the repairs without going the whole hog of consulting and obtaining the approval of tenants before the repairs.

In the area of obligations, landlords in Nigeria and England share certain similar obligations such as the obligation to provide the lessee with quiet enjoyment of possession, to ensure that a demised residential property shall be fit for habitation, and the obligation not to derogate from their grant. In England, the law has created additional obligations on landlords, such as obligation not to engage in retaliatory evictions, not to let premises to illegal immigrants, and the liability for certain anti-social behaviour of tenants.

VI. CONCLUSION

While Nigeria and England share the same heritage of the common law, the law of landlord and tenant in England has evolved more than in Nigeria. There is need to introduce legislation in Nigeria that would enable landlords to effect repairs to demised premises and to charge service charges for the repairs without any reasonable objection from tenants. At the moment, there is no clear-cut legal provision, whether by legislation or case-law, dealing with the issue of repairs and charging of service charges on demised premises during the pendency of the lease or tenancy. In many instances, either landlords are forced to await the eviction of a tenant before effecting repairs, or they may rely on tenants to do substandard repairs and convert same to rent. There is also the need to urgently create additional obligations on landlords in Nigeria, including the obligation not to engage in retaliatory evictions, not to let premises to illegal immigrants, and the liability for certain anti-social behaviour of tenants. In the area of illegal immigrants, there is a dire need to check the activities across Nigerian borders and the residency status of persons in volatile areas like the North East region and certain hotspots in the North of Nigeria. The menace of so-called Fulani cattle herders wreaking havoc in Nigerian Communities may be partly checked by legislation that imposes checks on landlords in the affected areas in allowing non-Nigerians to reside in their premises.

REFERENCES

Books

- [1]. AA Utuama, (ed.), *Critical Issues in Nigerian Property Law* (Malthouse Press Ltd 2016)
- [2]. E Chianu, *Law of Landlord and Tenant* (2nd edn, Lawlords Publications
- [3]. EH Burn, and J Cartwright, *Cheshire and Burn's Modern Law of Real Property* (18th edn, Oxford University Press 2010)

⁶³ E Schatzberger, 'The Immigration Act 2014: Not on the List You 're Not Coming In; Landlords Forced to Discriminate' [2015] (5) *The Conveyancer and Property Lawyer*, 395 – 407.

⁶⁴ *Smith v. Scott* (1973) Ch. 314; *X v. Hounslow LBC* (2008) EWHC 1168.

⁶⁵ F Sadiq and J Bates, 'A Landlord's Liability for Acts of its Tenants: *X v. Hounslow LBC* and *Mitchell v. Glasgow City Council*' [2009] (12) (1) *Journal of Housing Law*, 9 – 14.

- [4]. IO Smith, *Practical Approach to Law of Real Property* (rev edn, Ecowatch Publications 2013)
- [5]. TO Elias, *Nigerian Land Law* (4th edn, Sweet & Maxwell 1971)
- [6]. RA Onuoha, *Basic Principles of Nigerian Land Law* (ANON Publishers 2010)
- [7]. RA Onuoha, *Thesis on Land Use Act & Critical Issues of Reform Plus New Draft Rules & Regulation for Enforcement* (ANON Publishers 2013)

Articles and Chapters in Books

- [8]. E Schatzberger, 'The Immigration Act 2014: Not on the List You 're Not Coming
- [9]. In; Landlords Forced to Discriminate' [2015] (5) *The Conveyancer and Property Lawyer*, 395 – 407
- [10]. F Sadiq and J Bates, 'A Landlord's Liability for Acts of its Tenants: X v.
- [11]. Hounslow LBC and Mitchell v. Glasgow City Council' [2009] (12) (1) *Journal of Housing Law*, 9 – 14
- [12]. J Luba and J Compton, 'An End to Retaliatory Evictions?: New Measures on Repossession by Private Sector Landlords' [2015] (19) (3) *Landlord & Tenant Review*, 113 – 118
- [13]. MT Lonegrass, 'Eliminating Landlord Retaliation in England and Wales – Lessons from the United States' [2015] 75 *Louisiana Law Review*, 1072 – 1123.
- [14]. N Rees, 'Beyond Repairs: Increased Rights for Landlords to Recover Maintenance Cost' [2013] (14) *Solicitors Journal*, 157
- [15]. P Orji and L Meyer, 'The Spectrum of Compliance in the Break Clauses of Commercial Leases' [2015] 5 *The Conveyancer and Property Lawyer*, 408 – 416
- [16]. RA Onuoha, 'Compulsory Acquisition without Compensation Under Nigerian Law' in AA Utuama (ed.), *Critical Issues in Nigerian Property Law* (Malthouse Press Ltd 2016) 29