

Recovery of Residential Premises through Adoption of Alternative Dispute Resolution (ADR) Techniques: Experiences from Lagos, Nigeria

D. T. Olapade^{*1}, B. Olapade² and B. T. Aluko¹

¹*Department of Estate Management, Obafemi Awolowo University, Ile-Ife, Nigeria*

²*Biodun Olapade & Co., Estate Surveyors and Valuers, 29/31, Obafemi Awolowo way, Ikeja, Lagos, Nigeria*

Abstract

One of the remedies for breach of covenant(s) in landlord tenancy relationship is the recovery of premises. This is apart from reasons of personal use and/or the need for comprehensive renovation/adaptation/conversion that might warrant recovery of premises. Whereas it is easy as said or as may be engrossed in the Agreement to recover possession in case of breach of covenants(s), it is not so easy in practical term. The usual approach of achieving this in practice is through recourse to litigation which is expensive, time-consuming and also result into loss of income to the property. This paper aims at exploring the use of ADR techniques as a legitimate means of ejecting recalcitrant tenants in properties without the use of “power of threat”. This is with a view of providing information that will improve property investment and management. The paper adopts a case study approach using five selected case studies where ADR approach was employed to recover premises. The experience from the case studies shows that the use of ADR in premises recovery is effective but also has its challenges. In the five case studies, consent judgment, mediation, and negotiation that often includes persuasion and inducement were employed to recover premises in less than three months compared to an average of eighteen months using litigation. Also, the cost in all the cases were lower where they exist at all when compared with litigation that ends with *fieri facias* and the incidental expenses thereof. The paper provides useful information to practitioners on the practical use of ADR approach to recover premises from recalcitrant tenants.

Keywords: Tenancy; Ejection of tenant; Breach of covenant; Lagos State Citizen Mediation Centre; Alternative Dispute Resolution (ADR)

1. Introduction

Given the acute housing shortage plaguing many cities in developing countries, private rental housing has been suggested in the literature as a panacea to resolving the housing debacle (Agbola, 2005; Ayorinde & Ekemode, 2015). This serves as an impetus for many investors to invest in property development and consequently creating a landlord-tenant relationship. Like any investor, the aim of the property investor is to achieve maximum return on the investment in term of regular payment of rent whilst minimising risk. A good landlord-tenant relationship is, therefore, necessary for the property investment to yield the necessary return in order to meet the aim of the landlord (property owner).

Meanwhile, landlord-tenant relationships are often perceived as being contentious (Lobovitis &Hidalago, 2010), and characterised by suspicion, mistrust, power tussle, and the struggle by each group to get the best out of the relationship at the expense of the other party (Kasumu & Onyeonoru, 2016). A common misconception in the landlord-tenant relationship is to assume that the tenant is the weaker party that needs to be protected against the whims and caprices of the landlord (Ipaye, 2011). Unfortunately, this is often not the case. Sometimes landlords are faced with recalcitrant tenants who would not fulfil their lease covenants thereby destroying the relationship between the parties. In such situation, when the relationship between landlord and tenant hit the rock, the landlord is often left with no option but to recover possession of their property and regain back possession from the tenant. The approach usually employ in practice to effect recovery of premises is through litigation. Meanwhile, recovery of premises through litigation is strictly regulated by statute, therefore making it difficult to be achieved easily in reality (Wigwe, 2011). For instance, a landlord who seeks to recover his premises using litigation must strictly comply with provisions provided by the law such as the issuance of appropriate notices, the filing of claims at appropriate court, trial and eventual judgement; and, any slightest deviation from the request of the law will frustrate such attempt. Ipaye (2011) cited the case of Oketade v Adewunmi (2010) reported in Nigeria Weekly Law Report (NWLR) 8 (Pt. 1195) 66 to show the inherent difficulties of using litigation for tenancy recovery. In the referenced Supreme Court judgement, the tenant was ordered to deliver possession to his landlord in the trial court but employed the process of the court to stay on the property for fifteen (15) years until the Supreme Court ordered the tenant to vacate the property. Issues such as delay in getting a judgment for recovery of premises with consequential loss of income to the

property among other challenges have made the use of litigation for premises recovery less attractive.

The need for a prompt, fair and inexpensive mechanism for resolution of landlord-tenant disputes has led to the clamour for the use of alternative dispute resolution (ADR) techniques for resolving real estate dispute (Kasumu, 2017). ADR techniques involve resolving disputes in an amicable way without recourse to adversarial and formal judicial process (Islam, 2011). It involves the use of non-adversarial mechanisms such as negotiation, conciliation, mediation and arbitration for resolving disputes (Lobovitis & Hidalago, 2010). In order to promote the use of ADR, the Lagos State government established the Citizens Mediation Centre (CMC) and Lagos Multidoor Courthouse (LMDC).

Irrespective of the advantages of ADR over litigation in resolving the landlord-tenant dispute, its usage is still not common among real estate practitioners. For instance, studies conducted to show methods for resolving tenancy disputes such as recovery of premises ranks ADR as the least used method in Nigeria (Ojo, 2007; Aluko, 2018). Similarly, Onyema (2013) reported that out of a total of 1,136 civil disputes filed at the LMDC between the period of year 2002 and 2012, only 89 were tenancy dispute relating to landlord-tenant issues. The study, however, noted that in the year 2008 alone, 8,661 tenancy matters were filed before the Rent Tribunal in the state. Results such as this suggest that resolving tenancy matters / landlord-tenant related dispute through ADR is still not popular in Lagos State as it is seldom used. The low usage of ADR might be as a result of lack of knowledge on how to employ the ADR mechanism for recovery of premises.

It is against the backdrop of low usage of ADR for resolution of tenancy related dispute especially as it relates to recovery of premises among practitioners, that this paper examines the application of ADR techniques for recovery of premises. In this regard, the paper is divided into five sections including the introduction. The second section is the literature review while the third section presents the methodology employed for the study. Findings and conclusion are presented in the fourth and fifth sections respectively.

2. Literature Review

Recovery of premises describes the practise of involuntary and voluntary removal of a tenant from the premises. It is frequently associated with terms such as eviction, ejection, forced removal, expulsion, displacement among others (Leckie, 1995). According to the Lagos State Tenancy Law of 2011, the grounds for recovery of premises include the following:

- (i) arrears of rent;
- (ii) breach of any covenant or agreement;
- (iii) where the premises is required by the landlord for personal use; or
- (iv) the premises is being used for immoral or illegal purposes;
- (v) the premises has been abandoned;
- (vi) the premises is unsafe and unsound as to constitute a danger to human life or property; or
- (vii) the tenant or any person residing or lodging with him or being his sub-tenant constitutes by conduct, an act of intolerable nuisance or induces a breach of a tenancy agreement
- (viii) when the period of the tenancy has expired by effluxion of time for a tenancy that is for a fixed term certain

Other grounds include:

- (ix) where substantial repairs need to be carried out on the premises. In this case, the repairs must be substantial to make it impossible or dangerous for the tenant to continue to inhabit the premises.
- (x) If the property is required for personal use and residence by the landlord or his adult children.

There are different approaches identified in the literature for achieving premises recovery in Nigeria. This includes self-help, litigation, and ADR approaches (Ojo, 2007; Akogun&Ojo, 2013). 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. Section 44 of the 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.

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 (Legal Dictionary, 2018). The process of recovery of premises using litigation as dictated by the statute. It involves stated 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 (2010) earlier cited 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”.

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-adversarial approaches to settle a dispute and it involves settling disputes outside a courtroom (Lobovitis &Hidalago, 2010). 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 (Lobovitis &Hidalago, 2010). 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 (Kasumu, 2017). It is a process of iterated communication to “reach a joint decision by the parties in a dispute without a third-party neutral” (Ryan, 2005). 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.”(Riskin, 1996). It is a nonbinding proceeding in which the parties attempt a consensual

resolution with a neutral third party's help (*Kasamu, op. cit.*). 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 need not follow the mediator's suggestions to reach a solution that satisfies them (Lobovitis & Hidalago, 2010). Unlike, negotiation and mediation, arbitration is a binding adjudication of the parties' claims and defences by a neutral arbitrator (s) (Lobovitis & Hidalago, 2010).

The principal statute regulating the ADR process in Nigeria is the Arbitration and Conciliation Act, Cap. A18 Laws of the Federation of Nigeria (Rhodes-Vivour, 2008). In addition to this, there are other state's law that regulate ADR in Nigeria. In Lagos state, law that relate to ADR includes the Lagos State Multi-door Courthouse Law of 2007, the Citizens Mediation Centre Law of 2007 and the Lagos Court of Arbitration's (LCA) Mediation Guideline, 2011 (Onyema, 2013). Meanwhile, irrespective of the nomenclature of both the Citizens Mediation Centre Law of 2007 and the Lagos Court of Arbitration's (LCA) Mediation Guideline, provisions are in the legislation for all types of ADR.

The use of ADR for resolving tenancy related dispute like recovery of premises in Lagos State was given a boost with the establishment of the Citizen Mediation Centres (CMC) and Lagos Multidoor Courthouse (LMDC) in the year 2000 and 2002 respectively(Onyema, 2013; Ehigbalua, 2016). Similarly, the Lagos State Tenancy Law of 2011 encourages the use of ADR. For instance, Sections 30 and 32 specifically makes provisions in this regard. Section 30 states that the court shall enforce a valid agreement to arbitrate or arbitration clause in the tenancy agreement. Section 32 also state that the Court shall promote reconciliation, mediation and amicable settlement between the parties and might refer tenancy proceedings or any part of it to mediation at a Citizen Mediation Centre or to Lagos Multi-Door Court House with or without the consent of the parties.

Meanwhile, 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 (Condiffe, 2002; Lebovits& Hidalgo, 2010; Lucas, 2014; Kasamu, 2017). It has however been argued that the settlement agreement arrived at using negotiation and mediation are not binding on the

disputants except such settlement agreement is filed in the appropriate Court and endorsed by the Judge. While the arbitrator's ruling or award, on the other hand, is ultimately binding on the parties as if it were rendered by a court as a final judgment, however, the award has no force of law behind it. This is because the judgment is a private determination and the arbitrator has no lawful authority to compel enforcement of the award (Donner & Greenwald, 2006). Again, another disadvantage of using ADR is that it can result in one party conceding a key term to find a middle ground which the party could have received in litigation (Lebovits & Hidalgo, 2010). There is also the concern that ADR can restrict access to the courts especially when mandatory ADR clause prevent parties from litigation (Lebovits & Hidalgo, *op. cit.*). Although ADR has some drawbacks, it has some advantages in resolving complicated cases of the landlord-tenant relationship.

The problem of managing landlord-tenant relationship especially as it relates to recovery of premises has been a subject of intense academic research. Available studies have shown that efforts were concentrated on many aspects of this issue. These included the causes of recovery of premises (Ojo & Akogun, 2013), method/procedure of recovery of premises (Ojo, 2007; Wigwe, 2011), and, consequence of premises recovery (Akogun, 2013). Other studies such as Oni, Durodola and Oni (2014), Wahab, and Odetokun (2014), Wahab and Adetunji (2015) which although considers issues relating to resolving of disputes in the real estate matter were not focused on ADR. Studies such as Oladokun and Aluko (2014), Lobovitis and Hidalgo (2010) that have explored the use of ADR in the real estate matter were not focused on recovery of premises.

Wigwe (2011) 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. The study is however limited to an examination of recovery procedure using litigation without considering ADR techniques.

Lebovits and Hidalgo (2010) identified ADR approach being employed in New York City on real estate matter such as recovery of premises in landlord-tenant relationship to include negotiation, mediation and arbitration. The study

identified that while the ADR techniques offer advantages such as the speedy resolution of dispute, confidentiality, the convenience of parties to choose neutral and control the ADR procedure; it could also have the disadvantage of being voluntary and decision not binding except the settlement or award is registered in court.

Kasumu and Onyeonoru (2016) examined the role of the Lagos State Citizens Mediation Centre in resolving landlord-tenant disputes in Lagos State and discovered that landlord-tenant related dispute such as recovery of premises is among the dispute being resolved at the Centre by experience mediators using mediation mechanism. The study, however, did not provide information on the procedure of resolving such disputes. Again, Oladokun and Aluko (2014) examined the use of ADR mechanism for resolving dispute in a multi-tenanted property in Lagos, Nigeria and discovered that arbitration is the most common used ADR mechanism for resolving the dispute in the case study. Apart from the study being limited to a case study, it did not provide information on the procedure of resolving disputes using the ADR mechanism.

Furthermore, Kasumu and Onyeonoru (2016) examined the role of the Citizens Mediation Centre in resolving landlord-tenant disputes in Lagos State and discovered that the Centre employs only mediation mechanism to resolve disputes and the Centre is open to all members of the public. Similarly, Kasumu (2017) examined the effectiveness of the Citizens Mediation Centre (CMC) in resolving landlord-tenant disputes in Lagos State and discovered that the CMC is not very effective in resolving landlord-tenant related dispute It is however not clear from extant literature how recovery of premises could be achieved through non-adversarial technique.

3. Methodology

The study employs primary and secondary data to achieve the objective of this study. Secondary data on procedure of tenancy recovery using the Citizen Mediation Centre were obtained from the office of Lagos State Citizen Mediation Centre (CMC). Again, multiple case study approach was employed to describe five case studies where ADR techniques were employed for recovery of premises. The selected case study are properties selected from the management portfolio of the firm of the second author; Biodun Olapade& Co. A firm of registered estate surveyors and valuers recognised by the Nigerian

Institution of Estate Surveyors and Valuers (NIESV) and licenced by Estate Surveyors and Valuers Registration Board of Nigeria (ESVARBON) to practise estate surveying and valuation in Nigeria. The firm has been operating in Lagos for over twenty years. The selected case study are those that the second author who is a professional fellow of Nigerian Institution of Estate Surveyors and Valuers and Chartered Institute of Arbitrators and the managing partner of the firm were directly involved in handling their recovery process.

The case study were selected from a total of fifteen (15) cases where the firm have employed ADR for recovery of premises; and, the second author was directly involved. The cases were selected to reflect diversity on methods of ADR employed, location of the property/ rent passing, tenancy issue in order to mirror different scenario which the author have observed in practise of recovery of premises. Only five out of the fifteen cases meet this requirement and were therefore selected as the case study. For each of the case study, information were provided on property description, tenancy issues resulting into claim for premises recovery, the application of ADR technique(s) and comment on the uniqueness of the case study.

4. Findings and Discussion

The findings of the study are presented in this section. The section is divided into two parts; findings from secondary and primary data. The findings from secondary data provide information on the procedure of tenancy recovery using the Citizen Mediation Centre while the findings on primary data focus on the result from the selected case study where ADR approach has been employed for premises recovery.

4.1 Findings from Secondary Data

The procedure of tenancy recovery using the Lagos State Citizen Mediation Centre commences by filing with the Centre a written request for mediation. However, there are other means of instituting mediation process that is - court referrals and direct intervention. This process, where possible comprises five major stages namely case initiation, intake screening, pre-session, ADR session (mediation stage) and closure stage. The stages are described hereunder:

4.1.1 Case Initiation

The landlord/representative is required to fill and submit the required form (form 1) attaching four copies of the brief statement of the issue. Upon the receipt of the request form, the LMDC sends within 7 days of such receipt, a notice to the other party along with a submission form (form 2) and a copy of applicant's statement of issues. The responding party is expected to return within 7 days, the duly completed submission form (form 2) to the LMDC along with 4 copies of the brief statement in response

4.1.2 Intake Screening Stage:

Upon the initiation of the case at the Centre, the case is allocated to a Dispute Resolution Officer (DRO) who after careful examination determines the nature of the claims and the underlying interests.

4.1.3 Pre-session Stage

A pre-session meeting is convened by the DRO where he explains the ADR processes to the parties and then recommends a neutral considered suitable for the case to assist in resolving the dispute. A date for the session will be scheduled and then the parties signed a confirmation of attendance form and a confidentiality agreement (Form 5). An ADR session Notice is subsequently sent to the applicant after the neutral has completed the disclosure form.

4.1.4 The Phase of Mediation

After the parties have agreed to mediate, a date is then fixed for the actual mediation. The mediation process commences by the neutral providing the disputant rules of the process which includes to be orderly and civil and the parties should make effort to cooperate. This is then followed by the exploration phase, the caucus, joint session, and settlement agreement. These stages are described below:

- Exploration stage/phase**

This is the nucleus of the mediation. It is a stage of probe and discovery. This time the mediator understands the parties' needs. An important part of the exploration is the caucus.

- **The Caucus**

This is an essential tool of the Mediation. It is a private confidential meeting away from the plenary session, where he can ask confidential questions and perform reality test. The disputants get the opportunity to discuss concerns they are not yet prepared to discuss in joint session.

- **The Joint Session**

The mediator makes the return to the joint session smooth by recapping what prompted the caucus. He allows parties to tell each other what they have agreed. He reminds them of issues they left out in the proposals and also tells them to ask questions where they need to be clarified. He also brings their interest together and generates a way to compromise.

- **Settlement Agreement**

- a) When it appears to the Mediator that there exist elements of a settlement which would be acceptable to the disputants, he may formulate possible terms of settlement and submit them to the parties for observations. On receipt of redraft, he reformulates the terms of a possible settlement in the light of such observations.
- b) Parties on their own initiative or at the invitation of the Mediator, submit to the Mediator suggestions for the settlement of the dispute.
- c) Upon a resolution of the dispute, parties then draw up and sign a written Settlement Agreement embodying the terms thereof. Where requested by the parties, the Mediator shall draw up or assist them in drawing up the Settlement Agreement.
- d) On signing the Settlement Agreement, the parties are bound by the terms of the agreement.

- **Enforcement**

Once the settlement agreement are signed by the disputants, it is forwarded to the ADR Judge for endorsement. *Section 19 of the LMDC Law, 2007 and Order 39 Rule 4(3) of the High Court of Lagos State (Civil Procedure) Rules* provided that the settlement agreement shall be deemed to be enforceable as a judgment of the High Court of Lagos State under Section 11 of the Sheriffs and Civil Process Law.

4.2 Findings from Primary Data

The result from the selected case study is presented in this section. The multiple case study comprise properties of different configuration located in varying location in Lagos metropolis, Nigeria.

4.2.1 Case Study I: Property along Ladoke Akintola Street, Government Reservation Area (GRA) Ikeja, Lagos

The property is a detached five bedroom house located in a prime grade A location within Ikeja with an annual rent of seven Million Naira (N7,000,000). The property was occupied by a corporate tenant that use the property as their branch office.

Tenancy Issue

After the expiration of the initial payment of two-year rent in advance, the tenant could no longer fulfil their lease obligation of rent payment. A dud cheque was issued by the tenant and series of promise to pay the outstanding rent was not honoured. After the tenant was in arrear for a period of about six months, the landlord requested that the tenant surrender possession of the property and immediate payment of outstanding rent.

How the tenancy issue was resolved

A court-ordered negotiation was initiated by filing for recovery of premises at the Lagos High Court. This was achieved by informing the trial judge when the matter was mentioned in the Court that the parties have agreed to use ADR to resolve the dispute and therefore request that the matter be resolved with ADR, a request which was granted immediately by the trial judge. The negotiation method of ADR was employed to achieve the recovery of premises. Using the negotiation method, a meeting was conducted between the representative of the tenant and the agent representing the landlord. After series of negotiation, it was agreed that the tenant should vacate the premises within a month while the landlord also agree to forgo the outstanding rent. A term of settlement reflecting the agreement reached was endorsed by the landlord and tenant. This was later filed at the Court and pronounced consent judgment by the Court. The tenant surrendered possession before the agreed day without damaging the property.

Comment:

The recovery of premises was achieved in less than three months after the ADR approach was initiated. This is because the pronouncement of the term of settlement as the judgment of the court leave the tenant with no option than to surrender the premises since a consent judgment is not open to appeal and has the weight of a Supreme Court judgement. It is instructive to note that. *Section 4 (1) (b) of the LMDC law* allows the terms of settlement and memoranda of understanding reached by other ADR organizations to be filed at the LMDC and endorsed by the ADR judge to become the consent judgement of the High Court of Lagos state.

**4.2.2 Case Study II: Property along Chief Natufe Street, Surulere,
Lagos**

The property is a two bedroom flat within a block of four flat located within a high density residential neighbourhood. The annual rent passing on the property was Five hundred and Fifty thousand Naira (N550, 000).

Tenancy Issue

The tenant was unable to pay rent for the reason of being out of business and was in arrears of four months. The landlord requested that the tenant surrender possession of the property and pay outstanding rent.

How the tenancy issue was resolved

Negotiation was initiated by the firm of Biodun Olapade& Co. acting on behalf of the landlord. The tenant was persuaded to surrender possession on or before an agreed date. At the agreed date, the tenant failed to surrender possession on the ground that he has not been able to secure an alternative accommodation. The tenant guarantor was contacted and after much persuasion surrendered possession to the landlord.

Comment:

The recovery of premises was achieved through negotiation without recourse to the court. The danger in this approach is that if negotiation fails, other approaches would be considered with consequential loss of time and income.

4.2.3 Case Study III: Property at Masha Area, Surulere

Property Description

The subject property is a block of four units of two bedroom flats located in high density neighbourhood of Surulere. The rent passing on each of the flat was Four Hundred Thousand Naira Only (N400,000.00).

Tenancy Issues

Two of the tenants in subject property were in arrears of rent of more than two years when the firm of BiodunOlapade& Co. took over the management of the property. The property was also in a state of disrepair that require major repair works. The landlord instructed the firm to approach the Citizen Mediation Centre for possible ejection of the tenants and collection of arrears of rent.

How the tenancy Issue was resolved

When the CMC was approached, invitation was sent to the tenants but they refused to honour the invitation. After series of invitation and adjournment lasting almost a year, without the tenant showing up at the CMC, the mediator at the CMC advised that litigation be employed for the recovery of the premises. The matter was eventually filed in court and it took close to two years before judgement was given in favour of the landlord. However, before judgement was given, the tenants have vacated the premises without paying almost five years rent arrear resulting in a loss of income of about Two Million Naira to the landlord.

Comments

This case study shows the inherent weakness in ADR; where if there is no agreement between parties to mediation , or one of the parties refuses to show up, mediation might not be a usefulmechanism to resolve dispute.

4.2.4 Case Study IV: Property at UNILAG Estate, Magodo-Isheri, Lagos

The subject property is a three bedroom flat within a block of two flats located within a medium density residential neighbourhood.

Tenancy Issues

The tenant of the subject property who is also a relative of the property owner was in arrears of more than a year rent. The landlord wants to recover

possession but did not want the relationship between him and the tenant to be damaged. It is in this regard that the landlord invited the firm of the second author to mediate on the matter.

How the tenancy Issue was resolved

Meetings were held separately with the landlord and tenant to negotiate with them separately and understand their grievances. From the discussion with the parties, it was discovered that the tenant was willing to surrender possession but request to be refunded for some renovation he carried out and also request for additional time. The landlord on his part was not willing to refund the tenant for the renovation work carried out by the tenant but claimed that the pro-rata of the unpaid rent is beyond the amount spent for the renovation works. The two parties finally agreed that the tenant should surrender possession within a month while the two parties should forfeit their claim for compensation for renovation work and unpaid rent. The tenant was able to deliver possession to the landlord before the agreed date.

Comments

This case study shows that the professional Estate Surveyor and Valuer could be called upon to act as a mediator and achieve premises recovery without recourse to the court.

4.2.5 Case Study V: Property at Akinhanmi Street, Surulere, Lagos.

The subject property is a residential property, specifically a three bedroom flat within a block of four flats.

Tenancy Issues

The property owner requires the use of the property for his personal usage while the tenant was unwilling to deliver possession because of adequate notice was not given to the tenant.

How the tenancy Issue was resolved

The managing agent initiated negotiation with the tenant on behalf of the landlord. The tenant was unwilling to surrender possession except a concession to stay in the premises for six months without paying any rent was given to him. The tenant argued that since he was not issued the statutory notice of six months, the time was too short to search for alternative accommodation. After series of negotiation, the tenant was given two options either to get a refund of

three months' rent and surrender possession immediately or occupy the property without paying rent for three months and surrender possession immediately. The tenant chose the latter and delivered possession immediately his term expire.

Comments

This case study shows that recovery of premises need not be because of non-payment of rent. It could be as a result of the need of the apartment by the property owner. In addition, the result from the case study analysis reveals that negotiation could also involve financial inducement to achieve recovery of possession.

5. Conclusion

Recovery of premises are necessary to allow property owners to recover possession from tenants especially where there is a breach of covenant or the property is required for usage by the landlord. Litigation, which is the commonest approach employed for premises recovery in practise is fraught with many challenges such being cumbersome, time consuming, expensive, and capable of destroying future relationship of disputing parties. The paper explores the application of alternative dispute resolution techniques for premises recovery using practical experience from five selected case studies. In addition, information is also provided on the procedure of premises recovery using the Lagos Citizen Mediation Centre (LCMC). The process of using the LCMC for premises recovery involves firstly, filing with the LCMC a writ/ten request for mediation. The filing of the case is preceded by five other stages including case initiation, intake screening, pre-session, ADR session and closure stage, which will culminate in a settlement agreement that is enforceable.

Again, the five case studies provide different experiences in the application of ADR to resolve tenancy related dispute and achieve recovery of premises. The approaches employed include negotiation, mediation and the use of LCMC. The ADR approaches were able to yield prompt settlement of disputes resulting into the recovery of the premises within two months. The result from the case study also revealed that arbitration was not employed in all the cases considered. This could be because the use of arbitration requires the strict requirement for an arbitration agreement between the parties before the

commencement of arbitration, usually before dispute eventuate, except it is a court-referred arbitration (Onyema, 2013). In order to encourage the use of arbitration for recovery of premises, there is need to include arbitration clause in the lease agreement that is endorsed by the landlord and tenant. This could also be used to curb situation in which one disputants refuse that the dispute be resolved through ADR as observed in the Case study III of this study.

While the settlement agreement from negotiation and mediation in most of the case study were not forwarded to the ADR judge for endorsement to give it a force of law, however, this might not be the best practise. This is because ADR settlement agreement might not be enforceable if one of the parties refuses to abide by the non-binding settlement of negotiation or mediation except it is endorsed by the court and becomes the consent judgement of the court. In this regard, it is recommended that settlement agreements from negotiation and mediation should be forwarded to ADR judges for endorsement or a court-ordered ADR be initiated as observed in Case Study I.

The result from the case study however should not be taken to mean that the use of ADR among property practitioners for premises recovery is popular in Nigeria property market as earlier studies suggest otherwise. Meanwhile, the implication of non-usage of ADR for tenancy dispute is that it could take considerable longer period of time to achieve recovery of premises with its consequential loss of income on rent, rising expenses on litigation and heighten risk on property investment which might discourage potential investors from investing in property. It is, therefore, recommended that, property practitioners should consider the use of ADR for premises recovery and other tenancy related disputes. This might require necessary training for practitioners to be able to effectively operate as mediator or arbitrator. It is instructive to note that the Nigeria Institution of Estate Surveyors and Valuers(NIESV), the professional body of property practitioners in Nigeria is acting in this direction. Recently, the Faculty of ADR of the Institution in conjunction with LMC organised a training for NIESV members on the use of ADR for resolving real estate disputes. Apart from training of practitioners, the magistrates and judges should be encouraged by the Ministry of Justice and related agencies to refer tenancy related dispute especially those involving recovery of premises to ADR for resolution. This will free the dockets and allow timely resolution of disputes and dispensation of justice.

While this study did not consider the views of key stakeholders in application of ADR for recovery of premises; however, the study presents a practical way of how recovery of premises could be achieved through non-adversarial technique. Meanwhile, the study could be extended to address this issue.

References

- Agbola, S. B. (2005). *The housing debacle*. Inaugural lecture delivered at the University of Ibadan, August 4, 2005
- Akogun, I. T. and Ojo, O. (2013). The consequence of tenant eviction in Ilorin, Nigeria: Estate Surveyors and Tenant perspectives. *Journal of Research in Economics and International Finance*, 2(5), 79-87
- Akogun, T. I. (2013). Relative incidence of tenant eviction in residential and commercial properties in Ilorin Metropolis, Nigeria between 1998-2007. *Greener Journal of Social Science*, 3(7), 340-348
- Aluko, B. I. (2018). *Practise of recovery of premises among estate surveying and valuation firms in Ibadan*. B.Sc. Dissertation submitted to the Department of Estate Management, Obafemi Awolowo University, Ile-Ife.
- Arthur M. (2000). Alternative Dispute Resolution in Real Estate Transactions, 460 PLI -REAL ESTATE L. & PRAC. 857, 868 (2000).
- Ayorinde, O. I. and Ekemode, B. G. (2015). Private rental housing a panacea for sustainable housing delivery in Nigeria. Proceedings of EDMIC conference, Faculty of Environment Design and Management, Obafemi Awolowo University, Ile-Ife held at Ile-Ife, March 9-12
- Donner, M. F. and Greenwald, D. L. (2006). Alternative Dispute Resolution for Real Estate Disputes: Is ADR Really Faster, Better, and Cheaper? *Probate & Property*, May/June 2006, 36-40
- Ehigbalua, F. J. (2016) *Examination of Alternative Methods of Ejecting Tenant(s) in a residential property apart from court action*. Critical analysis submitted to the Nigerian Institution of Estate Surveyors and Valuers in partial fulfillment of the test of professional competence for admission into associate membership of the institution, Lagos
- Iipaye, A. (2011). *The Lagos State Tenancy Law*. Paper delivered at the Business Luncheon of Nigeria Institution of Estate Surveyors and Valuers, Lagos State Branch, held on Wednesday, September 7, 2011 at Airport Hotel, Ikeja, Lagos.
- Islam, M. S. (2011). Efficiency and effectiveness of alternative dispute resolution schemes towards the promotion of access to justice in Bangladesh. *IIUC Studies*, 8 (December), 95-112

- Kasumu, T. and Onyeonoru, I. P. (2016). Archival review of the role of the Citizens Mediation Centre in landlord-tenant dispute resolution in Lagos State, Nigeria. Proceedings of the 3rd International Conference on African Development Issues (CU-ICADI 2016)
- Kasumu, T. O. (2017). *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
- Leckie, S. (1995). *When push comes to shove: forced eviction and human rights*. Habitat International Coalition, Utrecht, Netherlands.
- Legal Dictionary (2018). Legal Dictionary. Available online at www.legal-dictionary.thefreedictionary.com/litigation (assessed on 20-05-18)
- Lobovitis, G. and Hidalago, L. R. (2010). Alternative dispute resolution in real estate matters: the New York experience. *Cardozo Journal of Conflict Resolution*, 11(437), 437-461
- Ojo, O. (2007). Tenants eviction methods in residential property market in Ibadan Metropolis. In Fadare, W. and Adesanya, A. (eds.). *Towards a sustainable built and natural environment*. The Faculty of Environmental Design and Management, Obafemi Awolowo University, Ile-Ife, Nigeria.
- Oladokun, T. T., Aluko, B. T. (2014). Dispute resolution in corporate multi tenanted property management: A case study. *Journal of Corporate Real Estate*, 16(1), 22-32
- Oni, O., Durodola, O. D. and Oni, A. S. (2014). Disputes resolution among residents of tenement properties in Lagos, Nigeria. *International Journal of Humanities and Social Science*, Vol. 4, No. 5(1), 288-296.
- Onyema, E. (2013). The Multi-door Court House (MDC) Scheme in Nigeria: A case study of the Lagos MDC. *Apogee Journal of Business, Property & Constitutional Law*, 7(2), 96-130
- Riskin, L. L. (1996). Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed, Harvard Neg. Law. Rev. 7, 13
- Rhodes-Vivour, A. O. (2008). Mediation ("a face saving device") - The Nigeria perspective. *Journal of International Bar Association*, 8(4), 1-8.
- Wahab, A. and Odetokun, O. (2014). Indigenous approach to housing-induced domestic conflict management in Ondo City, Nigeria. *Journal of Sustainable Development*, 7(4), 28-46,
- Wahab, A. and Odetokun, O. (2015). Conflict resolution strategies on community-driven projects in private and public housing estates in Lagos State, Nigeria. *African Journal for the Psychological Study of Social Issues*, 18(2), 42-70.

Wigwe, C. (2011). Recovery of premises in Nigeria: An assessment of the relationship of landlord and tenant law. *Journal of Commercial and Contemporary Law*. 63-75