The Landlord and Tenant Template

Foreword

The issues surrounding the relationships of landlords and tenants are as complex as the types of properties that are let out on a daily basis all over the world. In Nigeria, as in many other jurisdictions the general word on the street is that the law favours the tenants while the landlords are shylocks that must not be given any considerations.

This e-book is written to give you the reader the current law relating to residential property rentals in Nigeria. The book seeks to state the law in as concise a form as possible giving life sketches, which are actually culled from decided cases of our courts to properly explain the principles as much as possible to the layman.

It is meant for the businessman or investor in tenantable property, the letting and managing agents, landlords, tenants, sub-tenants, all over the country and as a guide to Persons in the Diaspora who own property here in Nigeria.

By the time you have read this e-book, you would know what the rights and duties of tenants and of landlords are, the covenants that are assumed in a tenancy; whether the agreement is written or not, the kinds of tenancies that the law recognises, who a squatter is and the procedure for ending a tenancy. You will have learnt that the law frowns on self help, and what the procedure is for evicting a tenant.

Is there a valid and invalid Notice to Quit? Certainly, and it could spell the difference to your evicting the tenant or having to bear with him till you start all over again.

Alternative Dispute Resolution (ADR) is gradually being deployed for the resolution of many landlord and tenant issues in the present commercial environment and is encouraged by every court in Nigeria today. Many people do not yet know the place of ADR in disputes with their landlord and think that the way out is to run away without payment of rents. That is only as short lived as the landlord wishes to turn a blind eye, especially given that identity verification is being encouraged at many levels of endeavour by today’s government.

Thank you for purchasing this eBook.....the purchase does not end there. Once you download you will be included on our Facebook group at www.facebook.com/groups/sisilawyerproperty . The discussions continue there so that you are able to ask questions, air views and seek further help, for at least three months from joining. New material will be loaded into the group as they relate to landlord and tenants on a permanent basis; this you will be entitled to as long as you have not opted out of the group before the time limit.
The Landlord and Tenant Template

This is the first in the series of eBooks by Sisi Lawyer. Watch out for more titles as advertised or on our website at www.sisilawyer.com.ng

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CHAPTER ONE

INVESTIGATING THE PROPERTY

When a person or a couple are in search of residential property it is usual to find the premises either by virtue of the estate agents’ signboard on the premises or by a visit to their offices. Know that in Nigeria the business of property management has not been regulated so you have both the professionals and the touts. Property search is fraught with myriad problems, people have been known to pay money or rent to agents who have no dealings with the property, and have lost money thereby. Prospective must be circumspect about property issues and must not leave the search till the dying days of their needs, he usually settles for what is available or the first property offered rather than the best available. Landlords, too take advantage of the desperation of some tenants and become lords unto themselves.

In the case of some landlords, the property is their investment cash cow and they are willing to take in the first tenant, not caring to determine his suitability. This usually results in a lot of costly problems later.

At the point of renting, a tenant will do whatever the landlord wishes. If his rent is not complete he will beg, if he is asked to pay 5 years rent in advance he will do so. However because most landlords do not take references from tenants’ guarantors or evidence that they have an income they run into trouble for payment of rents from these emergency tenants. The tenants are well settled in and without the visit of the court Sheriff and Baillifs they would not budge and usually intend to continue to live rent free. When they leave the premises, the state of repair is so bad, that the next desperate tenant is required to redecorate and repair the property, so he leaves the property again in a poor state, gradually eroding the wind and water integrity of the property over time.

There doesn’t seem to be an innocent party at that point and when trouble starts both are affected by the issues that usually end only in court.

Truth be told, eviction proceedings are not landlord friendly. The agents and solicitors get the drafting and delivery of notices wrong. The evidences are not complete; after such a long time the matters fail and the tenant sits pretty in the house.
This underscores the need to get it right at from the start. It is not all tenants that start out wishing to be recalcitrant but the parties must remember that it is an evolving relationship that both sides must endeavour to maintain very well. Landlords and tenants need to meet and to ask themselves questions about each other and the property. It may sound pedantic but agents tend to resist allowing the tenants to meet with the landlords, because many have been known to lose their commissions. Under the Recovery of Premises Act 1999 a landlord is defined to include his agent. The tenant must get assurances from someone, and if he is debarred from seeing the landlord by the agent, such agent must be willing either to be the message courier or must show a letter of authority from the landlord, granting him leave to deal with the prospective tenants and to give them all assurances about the property.

LANDLORDS' CHECKLIST

The landlord’s check list is not exhaustive, as circumstances of the introduction may demand that more requirements are demanded. Here is a basic list of what is expedient:

1. **EVIDENCE OF IDENTITY OF THE TENANTS.**
   This may be in the nature of the copy of his National Identity Card, International Passport or Current Driver’s Licence. A tenant who resists this probably has something to hide. To save himself from any fraudulent use of his identity it is fair that the landlord sign a receipt of the copy of the document.

2. **REFERENCES**
   This could be either from his employer or a person who is acceptable to the landlord who can assure the landlord that the tenant is able to pay his rents. It is also wise for the landlord to complete his own background checks. If the prospective tenant is self employed, it may be prudent to
conduct background checks on the person. His business card is a first place of check, his professional colleagues is another place etc. Property owners must remember that it is against the law to e against a constitution protects everyone from discrimination on account of the foregoing.

The Same Sex Marriages (Prohibition) Act 2013 ought to protect the landlord from renting his premises to a person on account of his sexual disposition. However it has been suggested that it is against the Fundamental Human Rights, even though uncontested in our courts so far.

3. TENANT’S FORM
It is wise to have a tenant form with details of identity, family, pets and In Case of Emergency (ICE) names and numbers. It is wise to make enquiries about why the tenant is moving house; watch his body language if you want to know the truth. A tenant that has been evicted by his landlord in the past, is not necessarily a bad tenant if he can show that he fell upon bad times and has recovered. Such a tenant ought to be able to get a reference from such previous landlord stating why he had to move out.

4. COMMON SERVICES
If there will be common services you need to be sure that the tenants income will be adequate to make the payment timeously and fully. By all means please avoid a tenant who asks for time to pay the initial rent. He will be a historically bad tenant as far as rent and service charge payments are concerned.

5. TENANT’S BODY LANGUAGE
If the tenant is in a hurry to move into your premises, your mind should throw up a red flag. Such tenants are usually irresponsible persons who are probably running from the law. There are always exceptions to every situation; his premises may have become inhabitable due to floods or fire; he may have just been transferred to another town and since he needs to pay for housing needs in his new place, it becomes wise to locate his family into small quarters.

6. SECURITY DEPOSIT
It is customary to ask for a month's rent from the tenant as a security deposit. This is refundable to him and can only be a set off towards part of the cost of redecorating the property at the end of the tenancy.
7. HEALTH AND SAFETY ISSUES

Tenants should be able to give a fair number of the proposed residents that will live on the premises. This is to avoid overcrowding. Overcrowding is a health and safety risk and may not be in the best interest of the property. It prevents properties from being wind and water tight as infrastructures will start to erode.

TENANTS’ CHECKLIST

Tenants must satisfy themselves about these:

a. UTILITIES
The prospective tenant needs to satisfy himself that he is not inheriting any bills from utilities suppliers like electricity or water. It is not a bad idea, and should be supplied, if he asks the landlord or his agent for proof of the last electricity payment. Water and local government charges should have been paid. Landlords may try to bully tenants into suppressing their enquiries about these utilities, this should throw up a red flag to the tenant and unless he wishes to pay the landlord’s debts he ought to insist that these are paid before his tenancy commences.
In a number of states in Nigeria, it is the landlord’s duty, and they attempt to push it to the tenant. This is why the new tenant must demand to know. Similarly he made make his own private enquiries from the utilities offices and local government.

b. LOCATION
An important consideration in choosing a rental property is how far away from the tenant’s place of work it is. Considerations about distance from children’s schools, family and even leisure are very important.
On the whole, the further one moves away from the centre of the town, the cheaper the rent is; but the cost of transportation might mitigate against such cheaper accommodation. The general safety of the location is pertinent, as well as if the property is set apart from the neighbours. Coming home at night may become a challenge, and so it may not be the most suitable, especially for a family with children.
c. AMENITIES
Distance or ease of access to amenities like hospitals, markets, places of worship may be a mitigating factor against a particular property.

d. RENT – IS IT WITHIN BUDGET
It goes without saying that the rent must be within budget. The International Labour Organisation benchmark is that no one should spend more than one third of their salary or income on accommodation.
Persons who pay rent above their capabilities usually aren’t able to pay further rents.

e. DISREPAIR
A tenant must know the extent of the state of disrepair, and either ask the landlord to repair such faults as damp from a leaking pipe, broken windows, or broken water cisterns, or obtain his consent, in writing, before embarking on any of such. The consent should also authorise the tenant to deduct the cost of repairs from the next rent. Where a tenant has such authorisation, the extent or limit of cost of such repairs must be agreed between him and the landlord.

f. FACILITIES
What are the facilities that come with the house? Water and electricity must be established. Take care that you see that water is supplied or if pumped from a borehole, that the pump is in perfect condition. Check that there is electricity supply and that there aren’t any lose wires around the house.
Do you have a car park assigned to you, if it a multi tenanted house. In such multi tenanted premises, ask a little about the nature of the other tenants. Are they noisy people, in the name of praying? Do they party a lot and are they allowed to spread chairs all over the compound?
The agent would probably counsel that you all live in pace, but establish the boundaries so that the peace may be achievable.
Is there a common generator? Where is it situated? If everyone has their own generator, where do the upstairs residents locate theirs? Is it going to be near the bedroom window of your own apartment?
**g. HEALTH AND SAFETY**
Tenant needs to satisfy themselves that there isn’t any dangerous staircase or open electrical socket in the house. Whether there will be children or not this should be sacrosanct. Is there cross ventilation in the every room?

How is gas designed to be supplied into the kitchen? Gas cylinders are best kept outside the kitchen. You need a permit from the fire service if you store, handle or use an aggregate quantity of Level 1,2,3 aerosol product in excess of 45.4kg net weight. Caterers please take note.

**h. COMMON SERVICES**
In any multi tenanted edifice, whether a house or an estate, there needs be some shared services. Those that should engage the enquiry of the tenant, where there isn’t a service charge to cover all, include responsibilities for burnt bulbs on stairways, keeping the compound clean, maintenance and dislodging of septic tanks.

If service charge is to be paid make sure you ask and understand your liability and how it will be determined from time to time.

**A FINAL WORD**

These lists are in no way exhaustive but represent the basic questions a person ought to ask of the other before the relationship starts. You no doubt have been told that in any agreement there are landlord and tenant covenants. These are the topic of Chapter 3 and have not been discussed in this chapter. Preparatory to any contract of tenancy between the parties, these enquiries are what will offer the basis of the offer from the tenant and the acceptance from the Landlord. It is always wise to insist on having a written agreement. In many parts of our country, landlords collect lawyer’s fees from their tenants, yet do not provide any written agreement. This is theft or deception and really is actionable. Lawyers are entitled to fees collected on their behalf so that they may be held liable when something goes wrong in the drafting.

While it is wise to make these enquiries, a lot of touts or unprofessional people have entered into the business of property rentals, and are making a lot of money but giving very poor service. Landlords usually patronise the services of such people and then cry foul when the tenants turn out to be less than worthy.

Similarly it has been known of prospective tenants who paid rents to ‘agents’ only to find that they had no authority to put up the property for rent and do not get access into the property after the payment, because the ‘agent’ can no longer be found.
This is why you need not only to read and understand the points in this eBook but to put them into practice as much as possible. Property is wealth and it is only an unwise man who would go to bed with fire in his roof.

CHAPTER TWO

TYPES OF TENANCIES

The rise in wealth and prosperity of any nation shows in the rate of development of infrastructure including housing for its people. Housing is a social need and a responsibility of every democratic government. It goes without saying that the need cannot be satisfied by government alone and so people profit from building residential property to make profit. This makes it imperative to regulate the relationships that arise between persons who we have grown to call landlords and those we call tenants. Regulations include the control of rent payments and their arbitrary increments, wrongful eviction and illegal holding over by tenants.

The creation of the relationship of tenancy is not regulated by any law but over the years, common law, the responsibilities and rights of both parties have been recognised due to the way law has evolved. Current laws attempt to define tenancy as holding or interest in land or property under a tenancy agreement.

Many landlords believe that the law of residential premises is stacked against them. The procedure for recovery of premises from a tenant is guided by strict observance of the law and is of such technical nature that if not properly progressed, the landlord has to start the process all over again. There is no gainsaying that litigation is long and cumbersome and so it is necessary to get it all right from the start.

WHO IS A LANDLORD?

Every landed property has a landlord; whether built or not.

A landlord is defined under the Recovery of Premises Act 1990 as

‘...a person who is entitled to the immediate reversion of premises and includes the attorney or agent of any such landlord or any person receiving (whether in his own right or as attorney or agent) any rent from any person for the occupation of any accommodation in respect of which he claims a right to receive the same.’

At Section 47 of Tenancy Law 2011 of Lagos State a landlord is defined:
"Landlord" in relation to any premises means the person entitled to the immediate reversion of the premises or if the property is held in joint tenancy or tenancy in common, any of the persons entitled to the immediate reversion and includes --

(a) the attorney, solicitor, agent or caretaker of any such landlord;
(b) any person receiving (whether in his own right or as an attorney or agent) any rent from any person for the occupation of any premises in respect of which he claims a right to receive the same; or
(c) a former landlord where the context so requires:

WHO IS A TENANT

Justice Cassey of the West African Court of Appeal – the Supreme Court for West Africa before we got our independence – in 1955 said in the case of one Mr Okedare against one Mr Hamid that

The Recovery of Premises Laws have been enacted in various States principally to provide for procedures a landlord must adopt to recover possession. Such procedures a landlord must adopt to recover possession. Such procedures are primarily to protect the interest of the tenant against that of the landlord.

Under the Recovery of Premises Act 1999 (Abuja) a tenant is defined to include any person occupying premises, whether on payment of rent or otherwise, but does not include a person occupying premises under a bona fide claim to be the owner of the premises.

Lagos State defines tenant as

To include a sub-tenant or any person occupying any premises whether by payment of rent or howsoever or by operation of law and not persons unlawfully occupying any premises under a bona fide claim to be the owner

If the definition of tenant was so easy then why do landlords have problems when a tenant does not vacate their property?

The law today recognises different types of tenants and strangely landlords do not seem to know them.

a. The tenant by effluxion of time
b. The yearly/monthly tenant
c. The Tenant at Sufferance
d. The tenant at Will
e. The tenant
THE TENANT BY EFFLUXION OF TIME

This tenant comes in to property for a stated period. In his agreement it states the time certain. It is usually stated as ‘five years certain’ or words to that effect. It means that if he takes possession on 1st January 2000 his tenancy ends on 31st December 2005. His agreement may entitle him to pay rent yearly but he may not be given any notices before the end of the period, save where he does not pay his rent or breaks other tenant’s covenants. He is expected to hand over the key not later than that date and the property in the perfect condition it is handed over to him.

He is not there because the landlord agrees and he is there even though the landlord disagrees. If he wishes to carry on as a tenant they agree to a year by year payment of rent he becomes an annual tenant

THE YEAR BY YEAR TENANT

The annual tenant pays his rent yearly. He is entitled to stay on the premises for as long as he pays the rent yearly and to be given quiet enjoyment of the premises. His duty is to make sure that the premises are in a tenantable state at all times and he does not relent on payment of whatever service charges due on the premises.

THE TENANT AT SUFFERANCE

Mr Okoye applies to Mr Briggs to be his tenant. At the end of the term granted Okoye doesn’t have money to rent a new place, Briggs has indicated that he no longer wishes to rent the premises so wants Okoye out. Okoye does not leave. Okoye does not ask him for any further rent.

The law says Okoye is neither a tenant nor is he a trespasser, because his original occupation was lawful but he is also not a tenant because his term has ended and the landlord does not wish him to be there any longer. He is holding over so he is a tenant at sufferance......indeed the Supreme Court says

A tenancy at sufferance arises where a tenant, having entered into a valid tenancy, holds over without the landlord’s assent or dissent. Such a tenant differs from a trespasser in that his original entry was lawful, and from a tenant at will in that his tenancy exists without the landlord’s consent. A tenancy at sufferance canaries only by operation of law, and not by express grant, for it assumes an absence of agreement between landlord and tenant......There
can of course be no claim for rent as such, for rent is a service which depends upon a proper tenure by consent.

THE TENANT AT WILL

A tenant at will is a tenant who has the landlord's permission to stay on the property past the expiration of the rental agreement. Also, a tenant who occupies rental property with the landlord's consent and makes rent payments without a written lease is called a tenant-at-will. A holding-over tenant differs from a tenant at will in that the latter has permission of the landlord to stay beyond the expiration date of the agreement, while the holdover tenant does not. A tenant at will is typically required to continue rent payments as long as they are permitted to remain.

A tenant at will is different from an annual tenant because he has permission and not an agreement, whereas an annual tenants’ has agreement for a renewable tenancy each time.

Most tenants, who have no agreement, will be categorised as tenants at will.

THE TRESPASSER

Is the man who comes into someone’s property without any permission. He really has no protection in law, but remember that sometimes agents collect money on landlords’ behalf when they have no such authority. Is such a person a trespasser? The law is not clear on that so landlords need to beware of who is acting on their property ostensibly for them. Remember that the definition of landlord includes his agent.

A FINAL WORD

We can see that while there is only one type of landlord there are several types of tenants. The landlords are the ones who need to be careful and circumspect when they decide what time of tenancy they wish to create. When a tenant by effluxion of time decides he wants to leave before his term certain, there will be consequences, because he has led the landlord to make certain plans or to have certain expectations. This may not be so if in their written contract the parties are allowed to give notice of termination of the tenancy. Whereas an annual tenant is free to leave as he likes, provided he does not owe rent....but then does he have security of tenancy while he is building his own house, for instance? That is does his tenancy, then, not depend on the whims and caprices of the landlord, on a yearly basis?
CHAPTER THREE

Covenants – Rights and Obligations

There cannot be any over emphasis about the fact that in entering into the relationship of landlord and tenant, both parties must understand that it is imperative that there is a written contract. Many landlords collect fees, purportedly on behalf of their lawyers and do not give a contract, because they never intended to enter into a formal contract with the tenant. Some of them do not give receipt of payment. Landlords do this at their own risk; in Lagos State there is a fine of N100,000.00 for not giving a tenant receipt for his rent payment.

a. There is no proof of the date of the commencement of the contract, so tenants can void as many Notices as they wish, since the notice is tied to the anniversary of the tenancy. In Lagos State, this requirement of anniversary of tenancy has been done away with for a yearly tenancy.

b. There is no detail about how to hand over the premises back to the landlord. Wise landlords put clauses about inspection prior to handing over in the contracts and tenants are bound. While it may be argued that a tenant has a duty to repair and keep in good condition all the time, many tenants have been known to disrepair the premises and make away with expensive items like electrical wiring, electricity meters, unpaid rents, unpaid electricity bills etc.

c. Tenants generally feel, especially in a residential tenancy that there is an unequal bargaining power with the landlords are generally suspicious of their landlords; the landlords too are suspicious of their tenants. A contract will ally whatever anxieties the one has of the other.

Most laws recognise the sanctity of the home. Therefore, tenants of residential properties are generally afforded more rights and protection than those of commercial properties. It is also because of the presumption of unequal bargaining power that residential spaces are afforded more protections. Therefore the landlords of residential buildings have a number of duties, which are sacrosanct, whether or not there is a written contract.
DUTIES OF LANDLORDS

DUTY TO GRANT POSSESSION TO TENANT

Once a tenant has paid rent, the landlord has a duty to deliver possession. It is not unknown that landlords collect money from new tenants even though they have a holding over tenant, assuring the tenant that the old tenant will soon leave. The duty to grant vacant possession to a tenant cannot be waived as the tenants do not have any privity of contract.

In the event that the possession is delayed, the contract or a supplementary document must be appended stating the new date of the commencement of the tenancy.

DUTY TO ENSURE THAT THE TENANT HAS QUIET ENJOYMENT OF THE PROPERTY

This means that during the tenancy, the landlord cannot interfere with the use of the premises by the tenant, as long as he is not using the premises for unlawful purposes. Though the landlord can enter the premises in an emergency, a mere necessity to ensure that all is well is not an emergency. That is why a landlord needs to have verified his tenant’s identity and occupation before entering into the relationship.

The duty of quiet enjoyment also extends to any one claiming authority through or from the landlord. Consequently, his wife or children cannot decide to park cars, or to cook on the premises that are let to a tenant.

If the landlord resides on the same premises, he cannot move his generator to a place where the noise and fumes from such would disturb the quiet enjoyment of the premises of his tenant. These issues must have been settled by the tenant before the relationship commenced, so as to forestall any claims of foreknowledge against the tenant.

THE DUTY TO MAKE THE PREMISES WIND AND WATER TIGHT

The property must not only be habitable, but it must remain habitable. If a tenant enters into a property during the dry season, and finds that the roof is leaking after the rains start, the landlord has the duty to repair such roof. Similarly if due to a surge in the supply of electricity to the premises, the electric supply goes off, it is not the duty of the tenant to repair. Repairs that make the property not habitable are the responsibility of the landlord, written contract or not. The law assumes that a landlord has given a warranty that his house is wind and water tight before subjecting a family into residing there at his own profit. A tenant who is not happy with the condition of the house, must report it to his landlord, and where the landlord gives authority in writing for him to repair the premises, he should suggest deduction of
such costs from the next year’s rent, if the tenancy is continuing. Without such written authority, he may not have any recourse to a refund.

DUTIES OF TENANTS

THE DUTY TO PAY RENT
A tenant has a duty to pay rent and any service charges agreed upon, levied on the premises. A tenant does not have the duty to pay land charges or local government charges for the tenement, as this is a contract between the landlord and the State.

DUTY TO KEEP THE PREMISES IN A STATE OF GOOD REPAIR
Tenants have a duty to keep the premises in a state of good repair. This extends beyond painting the premises at the end of the tenancy. In the course of the tenancy, the premises are expected to be kept clean, and walls etc. are not expected to be broken down. This may be agreed with the landlord however, and then it does not become a breach of covenant.

A tenant also cannot choose to turn any part of the premises into socially unacceptable use, like a poultry etc.

DUTY TO PEACEFULLY VACATE THE PREMISES AT THE END OF THE TENANCY
A tenant has the duty to vacate the premises peacefully at the end of the tenancy. Peaceful vacation includes restoring the property to the good state it was in at the commencement of the premises. A vigilant landlord would have a contract of inspection at least 4 weeks before the end of the contract, to enable the parties agree what needs to be repaired by the tenant, and a week before to ensure that such repairs have been completed. This is a duty expected to be performed within the term of the tenancy.

A FINAL WORD
The duties listed above are recognised in law, whether or not there is a written agreement. However there are usually a number of other requirements, which are determined by the nature of the occupation, family situation of either the landlord or the tenant. A tenant who is a caterer will need to obtain certain licences from the Fire Department and may need to carry buildings insurance in the joint names of landlord and tenant.

Similarly a landlord who resides on the same premises with his tenants, who provides services including security or possible generator services, will need to enter into more detailed covenants for bearing the cost of these services.
There can never be a one size fits all contract between all tenants and a particular tenant. The time has come for landlords to be mindful and diligent in ensuring the integrity of their properties if they intend to pass them to future generations.

CHAPTER FOUR

The Notice to Quit & Recovery of Possession

In my experience there is nothing that sends greater jitters down the spine of a tenant than the quit notice......but this is what Hon. Justice Chizoba N. Oji of the High Court of Justice of Abuja had to say about the procedure for ejecting the tenant, when refusing the eviction of the tenant in the case of Engr. Baba Sanda Liman and Hajia Altine I. Dogo

‘I cannot end this judgment without advising counsel to be very circumspect in the way and manner notices to quit are served on tenants for the purpose of recovery of premises. The Recovery of Premises Act is a technical statute and therefore must be adhered to strictly if a landlord wishes to succeed in his action. It is unfortunate that the Plaintiff has to start his process of recovery afresh to enable him quit the Defendant from his premises.’

Now, to many tenants this is cheering news, which they never knew. So rather than stay the course they start to run from pillar to post.

I do not expect landlords to be pleased with the last sentence but landlords need to learn from this too. So a circumspect landlord would see it as a win-win situation once his lawyer gets its right.

Before a Notice to Quit may issue, there must be a relationship of landlord and tenant and there must be a premises. It follows therefore that a tenant at sufferance (see Chapter 2 for definition) is not entitled to such a notice.

Unfortunately, many people have resorted to using the Notice to Quit at the wrong time, and therein lies the frustration of a lot of landlords, who then unlawfully, take things into their own hands.

It is not lawful for a landlord to take the law into his own hands, before or after an order of possession has been given by a competent court. What I mean is that before an order for possession, the landlord cannot evict the tenant by removing
the roof or disconnecting the water or indeed the electricity. If he does that he will be liable in damages to his tenant.

Prof Akinbayo Akinkugbe had actually obtained an order for possession against his tenant, Ewulum Holdings Ltd. The former tenant then sought an order for extension of the date of possession from the court. They wanted time beyond what the court ordered, to make arrangements to vacate, and had brought an application to the court for this purpose. Over the Christmas holidays, Ewulum travelled and on the 4th January, Prof forcibly entered the premises and threw out all his property, including a number of very expensive items. The matter was litigated to the Supreme Court who had this to say

A landlord who resorts to self-help in a bid to recover possession of the premises tenanted by him runs foul of the law and he is liable in damages. See (1) EliochinNig Ltd v. Mabadiwe (1986) 1 NWLR (pt. 14) 47, (2) Ihenacho v. Uzochukwu (1997) 2 NWLR (pt.487) 257 and (3) Mil.Gov. of Lagos State v. Ojukwu (1986) 2 S.C. 277. The law is common place that a claim for damages for trespass is at the instance of a person in lawful possession of the land such as in the instant case where the occupation of the premises by the respondents has the backing of the law. Therefore, the act of forceful entry into the premises and the subsequent eviction of the occupants together with their property is one of clear case of trespass for which damages ought to be paid by the appellant to the respondents.

Suffice to say that the owner of the premises ended up with a penalty of N10, 000.00 payable to his tenant. In my opinion he got off lightly.

DEFINITION OF NOTICE TO QUIT

This is a notice to the tenant to quit a property for the use of the landlord. A Notice to Quit is only required when the landlord needs his premises for uses recognised by law, during the pendency of a rental period. It only arises in situations when the landlord requires the premises for purposes of repairs, or personal use etc. It is usually in the statutorily prescribed form except where the parties have agreed how the relationship will be terminated.

…it must be in writing

It is expected that the landlord will issue the notice himself. We have defined who a landlord is earlier. It is usual however that if he asks his agent or solicitor to issue the notice, the fact of that authority is stated in the wording of the notice. It must be addressed to the tenant by his name, and must state the nature of the tenancy. It must state the date the tenant must leave the premises, (watch out for technicality) or deliver up possession. If the tenant has not been served by the preceding 30th June the notice becomes invalid. Care should be taken that the words of a notice
are clear and decisive, without any ambiguity, or giving an alternative to the tenant, or else it will be invalid.

.....the calculation of the period of notice

The length of the notice is calculated from the date of service of the notice. Therefore if the six months’ notice is given to mature on 31st December of a certain year there must be six clear months from the service of the notice and the 31st December.

.....it must be served personally

Although laws of the various states, with regard to possession and eviction of tenants may have slight variations, the notice must be served personally on the defendant, either by the agent or solicitor. Service by courier is acceptable but a signature must be obtained. The judge in the case of Engr Liman and Hajia Dogo refused to accept the service of the pasting of the notice on the front door. She did not say it was not recognised but she was not satisfied that the landlord made enough effort to find the tenant, in order to serve her with the notice.

PERIOD OF NOTICE TO QUIT

The period of notice depends on the tenancy type. The tenancy type depends upon the way the rent is paid. Consequently, a tenant who pays his rent weekly is entitled to a week’s notice, while a monthly tenant is entitled to a month’s notice. A tenant who pays his rent yearly is entitled to six months’ notice.

It bears repeating that the validity of the notice and its service are fraught with technicalities, which a lot of landlords and agents do not avert their minds to. It is particularly painful for most landlords that their expectation of vacant premises after a long and sometimes frustrating court process, to find that they are denied orders for possession because the Notices were technically wrong or invalid.

For a notice to be valid, it must

a. ....be in the prescribed form, except where the notice period has been agreed outside statute;
   b. .....it must be in writing;
   c. .....it must be served personally;
   d. .....it must be given within clear lunar periods.

What is a lunar period? This is probably the most technical of the process. Where the anniversary of a tenancy is say 24th of November, and the landlord needs to give 6 months notice, there must be 6 clear months in the period of calculation. That means that the 24 days in November, not being up to a lunar month, the six months be calculated as consisting of May, June, July, August, September and October. The
tenant must have been served with such a notice on or before the preceding 30th April.

Similarly if the notice is for a month, the one month, to be valid, must be a clear month.

WHO SHOULD GET A NOTICE TO QUIT?

Not every tenant needs to be given a notice to quit. A notice to quit is for the determination of a tenancy. So once a tenancy comes to an end there is no reason to determine it further. A tenancy that has a set period is one that does not require statutory notice.

It has been argued that an annual tenant does not require a notice to quit unless the landlord’s reasons for wanting use of the property, falls within those given by statute.

Where a tenant has not paid rent he is technically said to be holding over. What every such tenant is entitled to is a notice of seven days bringing the tenancy to an end.

THE SEVEN DAY NOTICE

To evict any tenant, the seven days notice is to be given. This must be validly served. It is known as the Notice of Owner’s Intention to Recover Possession. The rules about service are apposite. Thereafter the landlord will apply to issue a writ to claim possession and mesne profits.

At no time must the landlord resort to self help.

MESNE PROFITS

The word ‘Mesne’ is pronounced as ‘mean’

Once the period of every tenancy comes to an end the tenant is said to be holding over and is eligible to pay mesne profits to the landlord. It is no longer referred to as rent. Mesne Profit is calculated at a daily rate. Hear how our able Justices have defined Mesne Profits

"...the rents and profits, which a tenant who holds over after lawful termination or expiration of his tenancy or a trespasser has or might have
received during his occupation of the land or premises in issue, and which he is liable to pay as compensation to the person entitled to possession of such land or premises” Augie JCA in Nweke vs Ibekwe (2013)

“Mesne profits are awarded in place of rents, where the tenant remains in possession after the tenancy agreement has run out or been duly determined”. Pemu JCA in Nweke vs Ibekwe (2013)

“The expression mesne profits simply means intermediate profits, that is profits accruing between two points of time - that is between the date when the Defendant ceased to hold the premises as a tenant and the date he gives up possession. Rent is different from mesne profits. Rent is liquidated, mesne profits are not. Rent is operative during the subsistence of the tenancy, while mesne profits start to run when the tenancy expires and the tenant holds over. The action for mesne profits does not lie unless either the landlord has recovered possession or the tenant's interest in the land has come to an end or his claim is joined with a claim for possession” - Oputa JSC in Ahmed Debs vs Cneico (1986)

A FINAL WORD

The issuance of a Notice, be it a Notice to Quit or a Seven Days Notice of Owner’s Intention to apply to Recover possession is very technical and must not be taken lightly if the landlord is to succeed in evicting his tenant properly. Many tenants do not wait for that to happen, before absconding with the mesne profits due on the premises. However if you have taken references you will be able to recover any mesne profits granted by the court.

The Notices must be properly served on the tenant and some states allow that the notice is simply placed within a conspicuous part of the premises, like the front door. Notice to Quit become necessary only where the landlord wishes to use the property before the end of the term granted.

The tenant who holds over is only entitled to seven days’ notice, and every tenant who does not pay his rent when due, technically, holds over.
CHAPTER FIVE

Final Words

The relationship of landlord and tenant has been a very tenuous one, traditionally from history. It is not only within Nigeria that this relationship gets sour. Yet it need not be so. On the one hand, some tenants are intransigent and do not care to secure the integrity of premises, hence the detailed investigations that become necessary in choosing a tenant. Be that as it may, the landlord should insert as many clauses for his protection as may be necessary.

On the other hand, it is the landlords who are difficult to deal with. A good landlord ought to ensure that his tenant is comfortable while living in his premises. It improves the karma of the house and makes it wind and water tight.

We have been on a journey that has equipped us with our needs as either a tenant, landlord, rental property investor or indeed a property agent. As we discussed there are different laws that regulate the relationship of Landlord and tenant and so this ebook can only discuss general principles. Largely, except for Abuja and Lagos where new laws have be promulgated, the Recovery of Premises Edict (now law) applies.

Landlords and tenants are advised always to seek advice from legal practitioners and not touts who refer to themselves as ‘estate agents’. It is true that there are some people who set up business as Estate Agents, and who are not qualified in that field, but have over time, acquired the knowledge and skills of the industry. This eBook is written with such people in
mind as well. They should enter into alliance with lawyers, who should give them sound advice about tenancy issues and who can render services to them in the event of such need.

How much have you learnt? It’s important to know and as I said a download of this book entitles you to joining the Facebook Group. There you may ask questions and share experiences for everyone’s benefit. When we know what ails us as tenants or what ails a landlord then we learn to make adjustments for each other.

(Please note that none of the scenarios here represent the circumstances of any one known to me but are all scenarios in my imagination. Any likeness to a real life situation is merely co-incidental.)

SCENARIO ONE

Emeka is married and has two children, aged 13 years and 6 yrs old. He works with a large multinational company, precisely Guinness, and is at a middle management cadre. His forte is in business development and he has rose very rapidly in the company. He has management possibilities and promotion looms high on his radar. His wife, Bisola, was a Senior Manager at Ecobank. She has just been returned to Nigeria from secondment to Gambia but unfortunately she was rationalised in the last two months. She is job hunting as she wants to remain in the corporate world. Their younger child has sickle cell anaemia and gets quite sickly.

Emeka has just been seconded to help with the development of Guinness in Seychelles. It is a golden opportunity for him because it means that Diageo, the owners of Guinness have recognised his contributions to the brand. He will be away for at least three years.
He is currently building his own house, but had to slow it down due his wife's job loss and the fact that she now has to depend wholly on money from him for her needs.

They have to vacate the company residence provided at Ikoyi, as the accommodation comes with the local position. He is considering renting alternative accommodation for his family. You are his agent and he has asked you for advice as to what he should look out for so that his family are comfortable and safe.

Please list them.

SCENARIO TWO

Adaeze is a single mum and caterer. She has a very thriving business and does all her cooking on her premises. The premises is owned by her and consists of a semi detached wing and two facts on the other wing. One day due to negligence of her staff a fire started, at night, on the premises which totally destroyed her kitchen, and a substantial part of the living room of the tenant on the other side that shared a wall with her kitchen. It was by the grace of God that both families got out safe.

The premises tenant cannot live on the premises due to the heavy damages and has sought your advice as to what claims to make fro the landlord. What are the precautions Adaeze should have taken as well as the tenant before renting the premises?

SCENARIO THREE

Abubakar has rented premises from Chief Olowonla and paid for three years. Chief did not give him a receipt. Three years are up and Chief wants hi to pay for a further three years or else to get out of the premises. The house is in Yaba. What kind of tenant has Abubakar become? Abubakar has sought the help of his friend Amos a property agent as to how to stay in Alhaji's house either with no further payment of at best paying only a year's rent.

What are the issues that Amos needs to look into to give his friend good advice?

I hope that this book has given a good level of knowledge and assurance to you, be it as a landlord or as a tenant. This would give me the comfort of knowing that we as a people realise that law does not have to be the jargon that has led to mis-information of the past.
The Landlord and Tenant Template

To every tenant it is my wish that you will soon build your own premises and to every landlord I pray that you be led to good tenants, who will give you less hassle and pay your rents