

RENT LAW

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Q.1: The object of Sindh Rented Premises Ordinance, 1979 is to provide comprehensive mechanism and to maintain proper balance in order to protect interest of both tenants and landlords. Elaborate.

Answer 1:

INTRODUCTION

This Ordinance may be called the Sindh Rented Premises Ordinance, 1979. It shall come into force at once. The Ordinance appears to have struck a just balance between the requirements in good faith on the one hand and great inconvenience and trouble of the tenants on the other. Now therefore, in pursuance of the proclamation of the 5th day of July, 1977 and the law (continuance in force) order, 1977. The Governor of Sindh is pleased to make and promulgate the Ordinance.

An Ordinance to make effective provisions for regulation of relations between landlords and tenants and protect their interests in respect of rented premises within urban areas. Whereas it is expedient to make effective provisions for Preamble, regulation of relations between landlords and tenants and protect their interests in respect of rented premises within urban areas.

OBJECT OF SINDH RENTED PREMISES ORDINANCE, 1979

1. This Ordinance may be called the Sind Rented Short title and Premises Ordinance, 1979 Commencement.
2. It shall come into force at once.

3. In this Ordinance, unless there is anything repugnant in Definitions, the subject or context, (a) **“Building”** means any building or part thereof, together with all fittings and fixtures therein, if any, and include any garden, garage, out-house and open space attached or appurtenant thereto; (b) **“Controller”** means a Controller appointed under section 4 and includes a person working as Controller immediately before coming into force of this Ordinance; (c) **“Fair rent”** means the fair rent of any premises determined by the Controller under this Ordinance; (d) **“Government”** means the Government of Sind; (e) **“Land”** means land or open space, not being agricultural land or land or open space attached or appurtenant to any building.

(f) **“Landlord”** means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises; (g) **“Personal use”** means the use of the premises by the owner thereof or his wife (or husband), son or daughter; (h) **“Premises”** means a building or land, let out on rent, but does not include a hotel; (i) **“Rent”** includes water charges, electricity charges and such other charges which are payable by the tenant but are unpaid; (j) **“Tenant”** means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and includes.

- Any person who continues to be in possession or occupation of the premises after the termination of his tenancy;
- Heirs of the tenant in possession or occupation of the premises after the death of the tenant; and (k) **“Urban area”** means an area within the jurisdiction of a Town Committee, Municipal Committee.

MEANING OF LANDLORD

Landlord means the owner of premises and include a person who is for the time being authorized or entitled to receive rent in respect of such premises.

MEANING OF TENANT

Tenant means any person who under takes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person.

INTEREST OF LANDLORD AND TENANT

Landlord means the owner of premises and includes a person who is the time being authorized or entitled to received rent in respect of such premises. Tenant means any person who under takes or is bound to pay rent as consideration for the an association between two individuals arising from an agreement

By which one individual occupies the other's real property with permission, subject to a rental fee”.

The term landlord refers to a person who owns property and allows another person to use it for a free.

The person using the property is called a tenant. The agreement between a landlord and a tenant is called a lease or rental agreement.

Under section 5 of the Ordinance, Landlord and Tenant agreement may be signed by both parties mutually consent.

SAILENT FEATURES OF THE SINDH RENTED PREMISES ORDINANCE, 1979

Following are the salient features of the Sindh Rented Premises Ordinance, 1979 are as:

- Preamble.
- Purpose and object.
- Substantive as well procedural.
- Extent of the Sindh Rented Premises Ordinance.
- Tenancy Agreement.
- Sub-letting.
- Landlord and Tenant.
- Important obligation of Landlord.
- Important obligation of Tenant.
- Grounds for Eviction
- Rent Tribunal.
- Period for disposal of application.
- Appeal.
- Time period of decision of appeal.
- Provisions of Civil Procedure Code, 1908 not applicable.

Q.2 (a) – What is Fair Rent?

Answer 2 (a):

FAIR RENT

Under Section 8 of the Sindh Rented Premises Ordinance, 1979

1. The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors:

- a) The rent of similar premises situated in the similar circumstances, in the same or adjoining locality.
 - b) The rise in cost of construction and repair charges.
 - c) The imposition of new taxes, if any, after commencement of the tenancy.
 - d) The annual value of the premises, if any, on which property tax is levied.
2. Where any addition to, or improvement in, any premises has been made or any tax or other public charge has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of section 9 be determined or, as the case may be, revised after taking such changes into consideration.

LIMIT OF FAIR RENT

Under Section 9 of the Sindh Rented Premises Ordinance, 1979

1. Where the fair rent of any premises has been fixed no further increase thereof shall be effected unless a period of three years has elapsed from the date of such fixation or commencement of this Ordinance whichever is later.
2. The increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.

Q.2 (b) – What are the factors which are required by Rent Controller to take into consideration while fixing the Fair Rent. Discuss by citing examples.

Answer 2 (b):

INTRODUCTION ABOUT RENT CONTROLLER

Under Section 4 of Sindh Rented Premises Ordinance, 1979:

1. Government may appoint one or more Controller in any district and if more than one Controller is appointed in the same district Government shall

Define the local limits within which each of such Controllers shall exercise jurisdiction:

Provide that the Controllers working immediately before coming into force of this Ordinance shall continue to exercise their respective territorial jurisdiction until it has been altered, by Government.

2. No person shall be appointed as a Controller unless he has worked or, has been working, as a Civil Judge, for not less than 3 years.

FACTORS WHICH REQUIRED BY RENT CONTROLLER

The following are the factors which are required by the Rent Controller OR Additional Session Judge (A.S.J) to take into consideration while fixing the fair Rent are as follows:

- Rent controller is appointed by the government as an executive for fixing the problems regarding the rented issues between tenant and the landlord.
- Fair rent is the reasonable rent for a private property fixed and registered by a Rent Controller. In fixing fair rent, the scarcity of rented property is not taken into account and therefore fair rent is usually lower than the market rent.

As per section 2 clause (c) of the Sindh Rented Premises Ordinance, 1979. "Fair Rent" means the fair rent of any premises determined by the Controller under this Ordinance.

GROUND FOR DETERMINATION OF FAIR RENT

The Rent Controller upon application by the tenant or landlord determine fair rent of the premises taking into consideration the following factors:

- a. The rent of similar premises situated in the similar circumstances, in the same or adjoining locality.
- b. The rise in cost of construction and repair charges.
- c. The imposition of new taxes, if any , after commencement of the tenancy;
and
- d. The annual value of the premises, if any, on which property tax is levied.

1. SIMILAR PREMISES SITUATED IN THE SIMILAR CIRCUMSTANCES

The rent controller should consider the above factor while fixing the fair rent, because the rent should be according to the area's environment. When rent controller fix the rent he will be consider the same rent for the same area.

2. THE RISE IN COST OF CONSTRUCTION AND REPAIR CHARGES

The rent controller should consider the cost of the construction and repairing of the premises. Because the cost of construction and repairing directly effects the expanses of the landlord. If the cost of construction rises the amount of rent will also be rise.

3. THE IMPOSITION OF NEW TAXES, IF ANY, AFTER COMMENCEMENT OF THE TENANCY

After the fixing of fair rent if any tax imposed by the government, the tenant will be liable to pay extra to landlord in favor of rent.

4. THE ANNUAL VALUE OF THE PREMISES, IF ANY, ON WHICH PROPERTY TAX IS LEVIED

After the fixing of fair rent, rent controller should consider the value of the property increasing in annually,

FOR EXAMPLE:

All above mentioned four factors enumerated in section 8 (1) of the Ordinance have to be cumulatively taken into consideration for determination of a fair rent. (2001 SCMR 1103).

Factor that tenant could not afford to pay the revised rate of rent can hardly be treated as relevant consideration for fixation of fair rent. In case the rate of rent fixed by the Courts is not acceptable to tenant, he would be at liberty to abandon the tenancy and to secure other premises more suitable for his requirement.

(2001 AC 374).

LIMIT OF FAIR RENT

Under Section 9 of the Ordinance, provides time limit for enhancement of fair rent once fixed by the rent of controller. It provides that where the fair rent of any premises has been fixed no further increase thereof shall be effected unless a period of three year has elapsed from the date of such fixation or commencement of this ordinance whichever is later.

After three years the increase in rent shall not, in any case exceed ten per cent per annum on the existing rent.

EXCEPTION

Sub section (2) of section 8 provides an exception to the limit prescribed under section 9. It provides that where any addition to or, improvement it, any premises has been made or any tax, or other public charge. Has been levied, enhanced, reduced or withdraw in respect thereof, or any fixtures such as lifts or electric or other, fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of section 9 be determined or, as the case may be, revised after taking such changes into consideration.

FOR EXAMPLE:

Landlord can demand increase in rent on. The basis of increase in taxes by the Karachi Municipal Corporation. (ICLR 1985 C.C. 750).

CONCLUSION

From the above it is clear that Rent Controller can fix the fair rent after considering the four factors mentioned in section 8. Once a fair rent Cred cannot be enhanced for next 3 years except as provided in sub-section (2) of section 8.

Q.3: What do you understand by term default in payment of Rent and explain its consequences in detail?

Answer 3:

INTRODUCTION

When any agreement is held between the two parties then some duties and liabilities is applied on the both sides when someone is violated the terms and conditions of any agreement then party face the consequences.

DEFAULT IN PAYMENT OF RENT

Now we tells us what the meaning of the term of default its meaning deny the someone right and trying to denying the someone rights and not fulfill the own duty in the transactional system that is meaning of default in payment

When the tenant not paid the rent in due date and continually do that behavior the other party has a right to take the action against him in court of law.

CASE LAW:

Tenant instead of justifying his conduct as to default in payment of rent for more than two months agitating question of landlord tenant by raising contradictory and self-destructive pleas from time to time before lower forums. Tenant having audacity of challenging concurrent orders of rent controller and applied authority as to his eviction in high court on being unsuccessful before high court, tenant seeking leave to appeals against order of high court. Supreme Court considered view that this was a glaring instance of frivolous and vexatious litigation, which must be curbed at all levels, uphold the eviction order and refused leave to appeal against the judgment of High Court-2007 CLJ116.

Rent for January 1999 was deposited on 14.9.1999 whereas the rent for January, 1999 became due on 10.2.1999, six months' period expired on 10.8.1999 and admittedly the January rent was sent through money order on 14.9.1999. Default for a period of 33 days was thus committed, beyond six months' period. Constitutional petition of tenant on point of default in month's period. Constitutional petition of tenant on point of default in payment of rent, thus had failed and he was directed to vacate the premises and hand over its vacant possession to landlord within six months-2007 YLR 2064.

WHAT CONSEQUENCES IS HAPPENED IN MANNERS OF DEFAULT

- First of all, if tenant default continually then the right of eviction is handed of the landlord.
- The secondly the landlord goes to court and innate the proceeding against him.
- When the tenant default then the landlord has the right to finish the contract.
- If the in default manners happen lot of time the court issue the order for eviction.
- The in default system court quashed the right of defense of tenant which is very damage done for the party.
- If the party default, then the landlord uses the section 14 and 15 vii for eviction then the tenant not have the right for using the section 15 A because the party is own defaulted now I remember that maxim of equity who he seeks equity come with clean hands that situation occurred and court not support the tenant.
- In default of payment the tenant the landlord files the proceeding against him and rescinded the contract.
- There is problem in recovery of deposit of security in default manners.
- When any landlord evicts the any tenant wrongly then the tenant file application for restoration and compensated but when the tenant is strong on his position if tenant is defaulted and the violated the terms and conditions of agreement not attain this remedy in this sense the tenant default the tenant crushed the most of remedies.

Although many jurisdictions around the county have issued executive orders prohibiting commercial evictions, lock outs and dispossession, the orders do not prohibit landlords from asserting a rent default. These orders simply limit, for the time being, landlords' remedies against defaulting tenants. Therefore, it is becoming common practice for landlords to deliver written notices to tenants placing them in default. Landlords are reserving their rights and remedies against defaulting tenants in these letters. Whether the default is immediate or subject to a notice and cure period, the default in most cases is inevitable unless the parties agree in writing to acknowledge a change in status.

This gap between the executive orders and the rights of landlords to enforce remedies against tenants is risky territory, where tenants could suffer the unintended consequences of a rent default.

Unintended Consequences of a Rent Default:

While many tenants are laser focused on cash flow and cannot afford to pay rent, a rent default, if left unanswered, will result in tenants and guarantors unwittingly forfeiting rights and options under leases, perhaps subjecting tenants to additional costs in late fees and interest charges.

Rights and Options:

Rights and options contained in leases, such as the right to renew, the right of first refusal, the right to expand, the right to terminate, among other lease clauses, are commonly conditioned upon no event of default having occurred.

Concessions:

Concessions, including rent abatement clauses, are often undone by events of default, triggering immediate additional monetary obligations.

Assignment and Subletting:

Tenants, who unfortunately, will not have the wherewithal to survive the crisis, may be looking to assignment and subletting provisions as an exit strategy once the crisis subsides. However, the assignment and subletting provisions are also often conditioned on no event of default having occurred.

Guaranty:

Tenants should also consider the effect of a default on the guaranty, if applicable. Not only may a landlord now pursue the guarantor for the rent default, but also if a release of the guaranty is conditioned on there not having been an event of default, such release will no longer be available.

Security Deposit:

Security deposits also factor into the default analysis, as they are available for a landlord's use to cure the default pursuant to the terms of the lease. The security deposit will need to be replenished and landlords, given the current environment, may request an increased security deposit to replace the funds.

Late Fees and Interest:

Rent defaults will inevitably trigger the assessment of late fees and interest. Sometimes there are grace periods and we have seen that some landlords are proactively waiving these fees for the moment, but tenants should be advised to address these fees in any resolution reached with the landlord.

CONCLUSION

In that topic the discussed the meaning of default of tenant and tells the 9 consequences above mentioned. What is happened after the default situation? In landlord and tenant law, default refers to the failure of a tenant to timely pay rent due. In anticipation of such an occurrence, landlords commonly require a new tenant to pay a security deposit, which may be used to remedy defaults in payment of rent and other monetary obligations under the rental agreement. In general, the landlord is required to give the tenant notice of the default before bringing eviction proceedings or applying security deposit proceeds to the payment in default. The fixing of a definite default date for payment of rent can be critical if it becomes necessary to evict a tenant for a default in the payment of rent. Landlords often require a background and/or reference check on prospective tenants in an attempt to minimize defaults in rent payments.

Q.4 (a) – “Personal need” of Landlord is an absolute right. Discuss.

Answer 4 (a):

INTRODUCTION

Landlord is the owner of the premises and who is for time being authorized person in such of the Sindh Rent Premises Ordinance, 1979. He use the premises in “Personal need” is an absolutely rights according to the Ordinance. When widow, orphan or minor person is owner of the building, they can terminate the rent agreement. Also salaried employee is due to retire within the next 6 months or already retired person terminate agreement or use the premises in personal use. If any person attain 60 years of age or more than 60 years is an absolutely rights to use the premises for personal use. Sindh Rent Premises Ordinance further described in the following:

1. Notwithstanding anything contained in this Ordinance or any other law for the time being in force, the landlord of a building who is a widow, or a minor whose both parents are dead or a salaried employee due to retire within the next six months or has retired or a person who is due to attain the age of sixty years within the next six months or has attained the age of sixty years,

May by notice in writing, inform the tenant that he or she needs the building for personal use and require him to deliver vacant possession of the building within such time as may be specified in the notice, not being earlier than two months from the receipt thereof:

Provided that nothing in this sub-section shall apply where the landlord has rented out the building after he has retired or attained the age of sixty years or, as the case may be, has become widow or orphan.

2. Under section 15 sub section (2) clause (VI), the premises is required by the landlord for reconstruction or erection of a new building at the site and landlord has obtained necessary sanction for such reconstruction or erection from the authority competent under any law for the time being in force to give such sanction.
3. Under section 15 sub section (2) clause (VII), the landlord requires the premises in good faith for his own occupation or use of his spouse or any of his children.
4. Under section 15-A of the Ordinance, where the land-lord, who has obtained the possession of a building under section 14 or premises under clause (vii) of section 15, relets the building or premises to any person other than the previous tenant or puts it to a use other than personal use within one year of such possession.
5. Under section 15 sub section (3) of the Ordinance, where the landlord who has obtained the possession of the premises for the purpose of reconstruction of the building or erection of a new project shall demolish the existing building within 6 months of the taking over possession of the premises, or as the case may be commence the erection of the new building within 2 years of taking over of the possession of the premises, in case the landlord fails to demolish the building as aforesaid, the tenant shall be entitle to be put into possession of the premises.

6. Under section 15 sub section (4) of the Ordinance, where the landlord constructs the building as aforesaid the tenant who was evicted from old building may, before the completion of new building and its occupation by another person, apply to the controller or A.S.J (Additional Session Judge) for an order. Rent controller directing that he be put in possession of such area in the new building as does not exceed the area of the old building of which he was in occupation and the Controller shall make an order accordingly in respect of the Ordinance.
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Q.4 (b) – What do you mean by term Repair provided under Sindh Rented Premises Ordinance 1979.

Answer 4 (b):

INTRODUCTION

Under section 12 of the Sindh Rent Premises Ordinance 1979, Repair describe as the tenants have the right to take the house clean and not anything missed to house damages to the landlord. If is there any fault to not repair the house, landlord have authority go to the court or evict rental from the premises.

If the landlord fails to make such repairs or white washing as may be necessary to keep the premises in proper shape. On application made by landlord under section 15 sub section (1) Rent Controller or Additional Session Judge make an order directing the tenant. If the tenant has failed where landlord seek to evict the tenant under this Ordinance.

He can set the house as well as the agreement signed between mutually understanding both landlord and tenant.

REPAIRS ACCORDING TO THE ORDINANCE

Under section 12 sub section (1), Subject to the agreement, if the landlord fails to make such repairs or white-washing as may be necessary to keep the premises in

proper shape, the Controller may, on application made to him by the tenant and after such inquiry as the Controller deems fit to make, direct that such repairs or whitewashing may be made by the tenant and the cost thereof may be deducted from the rent payable to the landlord.

Under section 12 sub section (2), where any authority empowered by a law for the time being in force has required the landlord to make such repairs within such period as may be specified by such authority and the landlord has made default in this behalf, such authority may require the tenant to make such repairs.

Under section 12 sub section (3) where the tenant has made the repairs as aforesaid the authority ordering the repairs shall, after due verification of the details of the expenditure incurred by the tenant, certify the cost of repairs and the tenant may thereupon deduct the amount so certified from the rent payable to the landlord.

Section 12 does not speak of “annual” repairs or “annual white washing”. It only provides for such repairs or white washing as may be necessary to keep the premises in proper shape.

All the gas, electric city, water board bills are maintained as it is;

All the walls of house are maintaining same as well as;

If the house is use of residential purpose they cannot change into commercial area.

Q.5- What are the various modes for the eviction of tenant provided under section 15 of the Ordinance, 1979. Discuss in detail?

Answer- 5:

INTRODUCTION

Under section 13 of The Sindh Rented Premises Ordinance, 1979, Eviction is said that “No tenant shall be evicted from the premises in his possession except in accordance with the provisions of this Ordinance”.

MEANING OF EVICTION

“The action of expelling someone from a property expulsion”. The situation when landlord may seek eviction of the tenant. The right of ejectment is a statutory right available to landlord against the tenant. The Ordinance protect the right of tenant and landlord under this Sindh rent premises Ordinance, 1979.

ESSENTIAL

The eviction must be demanded on the proper grounds like needed for personal use. The notice of eviction must be in written form. The tenant is bound to deliver the possession in the given time.

MASSACHUSETTS LAW ALLOWS LANDLORDS TO EVICT LEASED TENANTS ONLY IF ONE OF THREE CONDITIONS ARE FOLLOWING

- Tenant failure to pay rent to the premises.
- Violation of the terms of the lease agreement by the tenant.
- Excessive damage caused to the rental property by the tenant or persons under the tenant's control.

VARIOUS MODES OF EVICTION OF TENANT

On the following grounds given below, the landlord can terminate or evict to tenant under the law of Sindh Rent Premises Ordinance, 1979 are as:

1. The tenant has failed to pay rent in respect of the premises in his possession within 15 days after the expiry of the period fixed by mutual understanding of landlord and tenant in agreement or in the absence of such agreement, within 60 days after the rent has become due for payment. Where the application made by landlord is on the ground mentioned against rental and move to this application to Additional Session Judge or Rent controller. Where Landlord seeks to evict the tenant or the controller shall make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in the order.
2. Where the landlord who has obtained the possession of the premises for the purpose of reconstruction of the building or erection of a new project shall demolish the existing building within 6 months of the taking over possession of the premises, or as the case may be commence the erection of the new building within 2 years of taking over of the possession of the premises, in case the landlord fails to demolish the building as aforesaid, the tenant shall be entitle to be put into possession of the premises.
3. Where the landlord constructs the building as aforesaid the tenant who was evicted from old building may, before the completion of new building and its occupation by another person, apply to the controller or A.S.J (Additional Session Judge) for an order. Rent controller directing that he be put in possession of such area in the new building as does not exceed the area of the old building of which he was in occupation and the Controller shall make an order accordingly in respect of the Ordinance.
4. Is the removal of a tenant from rental property by the landlord? In some jurisdictions it may also involve the removal of persons from premises that were foreclosed by a mortgagee (often, the prior owners or landlord who defaulted on a mortgage).

Depending on the laws of the jurisdiction, eviction may also be known as unlawful detainer, summary possession, summary dispossession, summary process, forcible detainer, ejectment, and repossession, among other terms. Never the less, the term eviction is the most commonly used in communications between the landlord and tenant. Depending on the jurisdiction involved, before a tenant can be evicted, a landlord must win an eviction law suit or prevail in another step in the legal process. It should be born in mind that eviction, as with ejectment and certain other related terms, has precise meanings only in certain historical contexts (e.g., under the English common law of past centuries), or with respect to specific jurisdictions.

In present-day practice and procedure, there has come to be a wide variation in the content of these terms from jurisdiction to jurisdiction.

The legal aspects, procedures, and provisions for eviction, by whatever name, vary even between countries or states with similar legal structures.

Some areas have "just cause eviction" laws, which prevents evictions for reasons other than an approved list. For example, the law in Seattle, Washington, requires a court order (and in some cases relocation assistance) and allows evictions for:

- Failure to pay rent or late payments after written warning more than four times per year.
- The tenant has failed to correct a violation of the lease or laws concerning public nuisance, sanitation, unlawful business, or habitually causes warnings to be issued with corrections made.
- The owner or landlord family is moving into the unit, and no adequate other units are available.
- The sale of a single-family home.
- Tenant-employees who are no longer employees.
- Renovation, demolition, or conversion to non-residential use.
- Violation of a legal requirement, such as building suitability or number of occupants.

- Tenants who live with the owner.
- If drug or health and safety-related crimes are committed (by the tenant or with the tenant's consent) on the property, street, or neighboring properties.

Under Section 15-A of the Ordinance, "Penalty for use of premises other than personal use". Where the landlord who has obtained the possession of a building under section 14 of the Ordinance or premises under clause (vii) of section 15, relets the building or premises to any person other than the previous tenant or puts it to a use other than personal use within 1 year of such possession.

- He may be punishable with fine which shall not exceed 1 year.
 - The tenant who has been evicted may apply to the rent controller for an order directing that he shall be restored to possession of the building or the premises.
-