



# The difference between a lease and a tenancy

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A lease has to be registered, which provides more protection to the occupant, but there are also remedies for those who have a tenancy.

MORE and more people are renting homes than buying them.

The law on the subject is provided for in the National Land Code (NLC). Sabah has its own Sabah Land Ordinance and Sarawak its Land Code.

Though people use the word tenancy and lease interchangeably, the NLC attributes a different meaning to the two different words and with different effect on those who are involved.

All land is vested in the State. Therefore land, together with whatever is built on the land, must be alienated. The person to whom the land is alienated becomes the proprietor and, once it is registered in his name, becomes the Registered Proprietor.

Leaving aside those who occupy land on the basis of a temporary occupation licence, owners of land fall under two categories – freehold or leasehold.

When renting a property, the word land refers to anything permanently affixed to the land so I shall refer to this – whether empty land, residential premises or commercial property – as property.

In the NLC, where the rental of the property is for three years or less, it is referred to as a tenancy. A tenancy for three years is exempt from registration.

On the other hand, a rental for a period of more than three years is a lease and the law provides for it to be registered. So a tenancy need not be registered, and leases can and need to be registered.

What difference does it make? Where a lease is registered, the existence of the lease is endorsed on the title. It, therefore, becomes a matter of giving notice to the public.

In such a case, if the proprietor decides to sell the property, the buyer if this is not disclosed to him and he does not make a land search, is bound by the lease because it is registered and endorsed.

The buyer, therefore, cannot deny the rights of the person to whom the property is leased or ask him to vacate the property until the expiry of the lease period.

However, ordinarily in cases even where the intention is that the premises be rented for more than three years and even for six or nine years, there is a tendency to enter into the arrangement for three years or less and then have an option clause to extend the tenancy once or twice or in rare cases even more.

Thus, the question would arise as to what would be the position of a person who had rented a property, but it was a tenancy exempt from registration with option to renew for a

further term of years.

Non-registration of such a rental arrangement does not leave a person without a remedy or means of protecting the interest that he has. However, it gives rise to different consequences depending on how he has provided for his rights and also depending on being able to rely on principles of equity.

For the new buyer to tell the tenant to leave he must be a *bona fide* buyer for value without notice. This means that at the time of the registration of the lease, he was not aware. When this happens the tenant cannot raise a claim based on an equity to stay.

His right will then only be based on contract with the former owner. The relief he would be entitled to would be in the form of damages, but not in the continued right to occupy the premises.

On the other hand, if the buyer is aware of the existence of the tenancy, then he would fall into the category of a person deemed to have notice and not a *bona fide* purchaser for value without notice.

In this case, on the basis of equitable principles, there would be room for the tenant to assert his right to stay on the premises until the end of the tenancy, but issues of evidence will arise.

There are cases where the proprietor, who has earlier rented out the premises, may make an arrangement in the sale and purchase agreement with the new buyer to allow the tenant to continue to stay until the expiry of the tenancy. Here no problem arises.

Is there any other way in which a tenant can protect himself, where it is a tenancy?

There are provisions for such protection in the NLC by way of Section 316 in Chapter 7 which reads as follows:

“Any person or body claiming to be entitled to the benefit of a tenancy exempt from registration may, for the purpose of protecting his rights thereunder against subsequent dealings, as mentioned in Section 213, apply to the Registrar under this section for the endorsement of his claim on the register document of title to the land thereby affected.”

However, Section 213 defines a tenancy exempt from registration as a tenancy or sub-tenancy for a term not exceeding three years granted under the NLC and any tenancy or sub-tenancy for a term not exceeding one year granted pursuant to the provisions of any previous land law.

**Any comments or suggestions for points of discussion can be sent to mavico7@yahoo.com. The views expressed here are entirely the writer's own.**