



EFFECTIVE TENANCY MANAGEMENT-WHAT TO DO WHEN TENANTS DON'T PAY

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Introduction

Best job in the world is to be a Landlord.

Headaches come when Tenant defaults.

Problem of choosing the right tenant.

When Tenant's business fails, the first default is generally default in rent.

Good to insist on guarantors for

rental payment if tenant has no track record.

Effective Tenancy Management

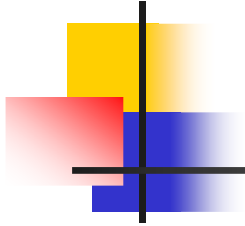
■ Landlord's Remedies for Non-Payment of Rent

- action for distress i.e. seize tenant's goods and sell them to pay the arrears
- an action for rent i.e. sue the tenant on the covenant to pay rent in a civil action under contract
- forfeiture i.e. terminate the lease (tenancy of more than 3 years registered with Land Office) by exercising his power of forfeiture (this right must be expressly reserved)



Action for Distress

- A distress action involves the landlord going into the demised premises to impound (take possession) goods to the value of the rents owed, so as to compel the tenant to pay up.
- Distress lifted once Tenant has paid arrears of rent in full or to satisfaction of Landlord.



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- Wrongful recovery of goods will expose the Landlord to an action of trespass by real owners of goods.
 - if tenant fails to repay in time, landlord can sell goods and reimburse himself for the rent owed, from the proceeds. Any balance must be returned.



Right to Distrain

- 3 requirements:-
 - a) existing tenancy
 - b) tenant failed to pay rent
 - c) person seeking to distrain must be Landlord.



Procedure for Distress

- 1) Landlord applies to a Sessions Court judge or Magistrate for an order for a writ (warrant of distress) to be issued. It is limited only to recovery of rent up to a period of 12 months [s5(1) Distress Act 1951]
- 2) Warrant is addressed to Bailiff and directs him to enter on the premises and seize goods to the value of rent owed plus legal fees and Bailiff's fees and expenses



Procedure for Distress

- 3) After seizure, Bailiff must make an inventory of the property seized and its approx value and give the tenant a notice of seizure with inventory and valuation informing him of the amount due under the writ and that the property seized will be sold at a stated time and place
- 4) Tenant may apply to the Court to discharge or suspend the warrant or release any property seized



Procedures for Distress

- 5) Property seized will be sold at the time and place stated in the notice. Proceeds will pay off Bailiff's cost and expenses, then to the Landlord for rent arrears and his legal costs



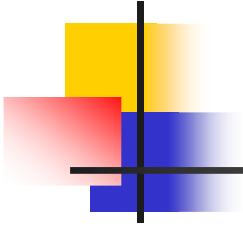
Suing on the covenant to pay rent

- Rent owed is a debt hence recoverable by suing tenant on the contract
- But tenant can claim defences ;
 - a) tenant was evicted
 - b) goods taken in distress have been sold in satisfaction of the arrears or remain impounded



Action for compensation for use and occupation

- Even if there is no express covenant or agreement to pay rent, the landlord can bring an action for compensation for use and occupation
- allowed under common law and based on an implied promise by the tenant to reasonably compensate his landlord for the loss of use of the premises



- This action is used where it is not possible to sue for rent, tenant holds over, tenant has gone into occupation under a lease not yet executed
- action not allowed if landlord has commenced proceedings for eviction hence treating the tenant as a trespasser



HP PROJECT SDN BHD v INVESTROP (M) SDN BHD [2005] 3 CLJ 851

- Appellant had breached a term of this tenancy agreement by failing to secure approval from the relevant authorities to renovate the said premises into a restaurant.
- This made the Respondent to terminate the tenancy and to reclaim possession of the said premises.
- cl7(b) of the tenancy agreement states that the landlord shall be at liberty to re-enter upon premises but without prejudice to any right or remedy.
- But the Respondent did not abide by this procedure to terminate the said tenancy agreement. The Respondent only relied on its solicitors letter to effect termination



HP Project Sdn Bhd

- Hence, the clause only permits the landlord to commence an action or institute a remedy against the tenant in respect of a breach of the tenancy agreement other than for termination of the tenancy.
- Landlord's remedies to evict or remove tenant when rent is in arrears,
- Right of re-entry:-
 - a) physical act where the landlord goes to the premises and take back possession of the premises was held to be not suitable.



HP Project Sdn Bhd

- b) tenant can recover back from landlord under s.8 Specific Relief Act 1950, whereby a person who has been dispossessed without his consent of immovable property, to commence action for recovery of property
- c) Court of Appeal held, best way to avoid re-entry, is to file action against tenant claiming possession
- e) The act of filing and service is similar to re-entry
- f) date of service is the date of termination

HP PROJECTS SDN BHD

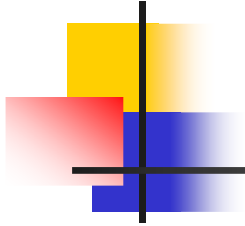
[2005] 3 CLJ 851

- cl.7(b) of the tenancy states that landlord has liberty to re-enter upon premises but without prejudice to any remedy or right of action of the landlord in respect of any breach of terms.
- Another way is by letter of termination
- attempt to re-enter is met with refusal from the tenant under s8 SRA 1950, so to overcome this uncalled for method, best alternative is filling an action against the tenant claiming possession of the premises

MARI BOUTIQUE SDN BHD v JAYA JUSCO

SDN BHD [2003] 4 CLJ 848

- Is double rent recoverable via Distress Act?
- No, according to MARI BOUTIQUE
- a) s4, shall not distrain for double rent
- b) s5(1), distraining for rent for a period not exceeding 12 months and tenancy still subsisting
- c) s5(3), arrears of rent may be recovered after termination provided either the tenant is still in occupation or any goods of tenant still on premises

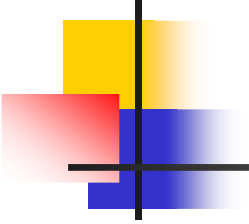


- Landlord is entitled to claim double rent from tenant under s28(4) Civil Law Act 1956, where the tenant remains in occupation of premises after termination
- double rent is not contractual rent but a form of damages for failing to quit the premises after tenancy is terminated
- but, double rent is not arrears of rent, hence not recoverable by a writ of distress under the Act



NUR-ISLAM WORLDWIDE INDUSTRIES
SDN BHD v YEE KOK SUM [2001] 7 CLJ
494

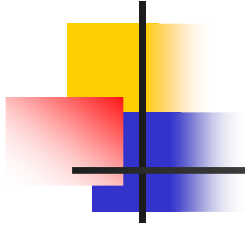
- Right of re-entry and forfeiture
- s7(2) Specific Relief Act 1950, specific immovable property under a tenancy but occupier continues to remain in occupation, hence the person entitled to possession shall not enforce his right to recover against occupier other than Court proceedings.
- s4 Distress Act 1951
- s5(1) Distress Act 1951

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- On the facts, landlord entered onto premises without any Court order and sealed premises
 - Landlord may be deemed a trespasser
 - ABDUL MUTHALIB HASSAN [1992] 1 CLJ 88
 - - locking up premises for non payment of rent is no justification for trespass, may mitigate damages
 - ER ENG BONG [2000] 1 CLJ 289
 - - amended s7(2) SRA 1950 would relegate remedy for 'self help' hence landlord can only seek to enforce his right to recover his property by way of Court action

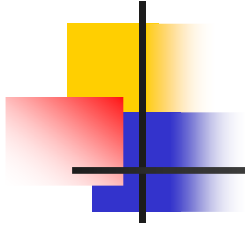


PREMIER MODEL (M) V PHILEO PROMENADE SDN BHD & ORS [2001] 1 LNS 173

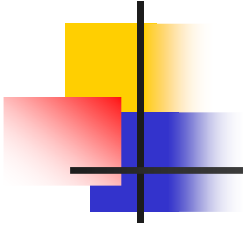
- The Defendant gave notice to the Plaintiff that if they still fail to pay the outstanding charges, the Defendant would suspend the water supply.
- After ignoring the defendant's notice, the defendant suspended water supply to the tenants.
- the main provision of the said agreement which is 5.01(b)(4) reads, the vendor is entitled to suspend any services, utilities etc in the event of default in the payment of any dues.



- the term service charge in s1.01(m) includes electric power and water supply.
- The plaintiff prays for an injunction to restore water and/or electricity supply and restrain Defendant from turning off or interfering with the said meters



- It was held that the Defendants were well within their rights to suspend water supply if the occupier fails to pay service charges
- As for the application for injunction, since the Defendant restored water supply, therefore there is no need to grant the injunction.



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- Furthermore, an injunction should only be granted if the Defendant has committed a wrong, and since the Defendant's action to suspend water supply was well within the s.5.01(b)(4) of the said agreement, the application to seek for an injunction to stop the action should not be entertained.



SME AEROSPACE SDN BHD v STEYR
MANNLICHER (M) SDN BHD [2006] 5 CLJ 121

- Defendant had wrongfully and illegally evicted and barred the plaintiff from the property
- s7(2) SRA 1950, person entitled to possession of specific immovable ppty may recover
- but if under a tenancy, that tenancy is determined or has come to an end, but the occupier continues to remain in occupation, hence the person entitled to possession of the ppty shall not enforce his right to recover it against the occupier other than by proceedings in Court.
- Provision prohibits defendant from taking over possession of the ppty without a court order, as in this case



DR. HARJIT SINGH V SUHAIMI BIN SAMAT & ANOR [1995] 1 LNS 62

- Conduct of defendants locking plaintiff out of the premises amounted to a breach in tort in contravention of s7 SRA 1950.
- Defendant should obtain court order before it can recover possession of the property from the plaintiff is mandatory
- s7(2) imposes a pre-condition of obtaining a court order before the defendant can recover possession of the property



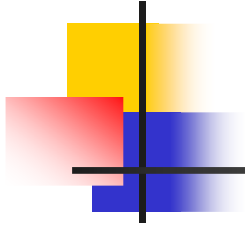
UNITED ORIENT LEASING CO SDN BHD v
PERDANA PROPERTIES SDN BHD (FC)
[1980] 1 LNS 87

- Goods and chattels belonging to applicants and seized under Distress Act, be released to the applicants
- applicants leased out to Emporium President and Supermarket Sdn Bhd a few items and chattels as stated in Lease Agreement
- counsel for applicants argued that seizure is wrongful and bad in law, secondly goods did not belong to the emporium and thus wrongly seized
- s20 DA 1951, landlord cannot levy execution of property which has already been executed and that landlord's only right is the payments out of sales of the property.
Appeal allowed and goods returned to appellants

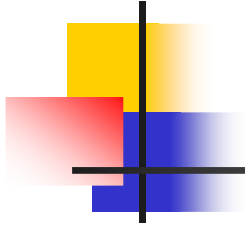
KONG PENG PEW & ORS

[2003] 6 CLJ 392

- The Plaintiff bought houses from the Defendant, a development company.
- It was agreed that the Defendant would provide all utilities ie. water, electricity, etc.
- The Defendant then imposed maintenance charges on the Plaintiff and a dispute arose between them thus resulting the Defendant to cut off the water supply.



- The Plaintiff filed an action against the Defendant over the dispute on the said maintenance charges
- However pending disposal of that action, the Plaintiff sought an interlocutory injunction directing the Defendant to connect the water supply and an injunction to restrain the Defendant from disconnecting the water supply.

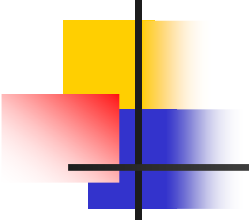


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- The Plaintiff argued that provisions cl.14, 16 and 17 of the agreement made the Defendant to provide for the utilities and the Defendant had no right to cut off the water supply.
 - The Court held that the Defendants has infringed that right and allowed the application of the injunction.



HO SIEW CHOONG v ON-KWARD REALTY
SDN BHD & ANOR [2000] 8 CLJ 175

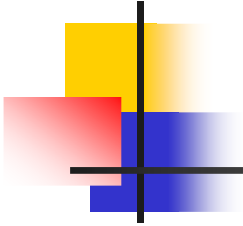
- The Plaintiff claimed for an injunction that the Defendants reconnect the water supply and an injunction to restrain the Defendant from shutting of the water supply.
- The Defendant counter-claimed for overdue maintenance fees.

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- The Plaintiff has no objection on the existing maintenance charges but on the new maintenance charges.
 - The Court held that the Plaintiff be awarded RM1,000.00 as damages, dismissed the counter-claim but made no order with regards to the injunction as the Defendant reconnected the water supply.
 - Supreme Holdings v The Sheriff, Supreme Court of S'pore & Anor
[1987] 1 MLJ 10
 - Arrears in service charge
 - allowed as the tenant did not dismiss claim



Conclusion

- Landlords have very little remedies when it comes to rent in arrears.
- We have no Statutes with regards to Landlord and Tenant.
- Landlords have no specific Act other than the distress action under Distress Act 1951.



- Landlords are always look upon as the 'bad guys' as they have no other alternative but to evict the tenant when rent is in arrears or sue in court.
- Landlords would rather evict the current tenant and find a replacement immediately to maintain his steady flow of income.